

GOVERNANCE IN THE PUBLIC INTEREST TASK FORCE  
TASK FORCE MEETING

Thursday, February 25, 2016

10:04 a.m. to 3:05 p.m.

The State Bar of San Francisco

180 Howard Street

Board Room, 4th Floor

San Francisco, California 94105

Reported by:

JOAN B. MERTEN

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A P P E A R A N C E S

PRESIDENT: DAVID PASTERNAK

EXECUTIVE DIRECTOR: ELIZABETH PARKER

COMMITTEE MEMBERS: MIRIAM KRINSKY  
JASON LEE  
DENNIS MANGERS  
JOANNA MENDOZA  
DANETTE MEYERS  
GWEN MOORE

ALSO PRESENT: VANESSA HOLTON  
LEAH WILSON  
FRANCISCO GOMEZ  
TERI GREENMAN

GUEST SPEAKERS:

PAULA LITTLEWOOD, Executive Director, Washington State Bar

YVONNE CHOONG, Vice President of the Center for Health Policy at the California Medical Association (Via the Web)

ELLEN MILLER-SHARP, Executive Director, San Diego Bar Association, (Telephonically)

DAVE JONES, California Insurance Commissioner

VICTORIA HENLEY, Commission on Judicial Performance

GEORGE BROWN, Executive Director of the State Bar of Wisconsin

PUBLIC COMMENT:

DONNA PARKINSON

PERRY SEGAL

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1 GOVERNANCE IN THE PUBLIC INTEREST TASK FORCE

2 TASK FORCE MEETING

3 10:04 A.M.

4 MR. PASTERNAK: Thank you all, and welcome to our  
5 guests here. I know that we have guests on the telephone  
6 as well, including, I'm told, some members of the  
7 legislative staff. We have the press here also. And  
8 we're very glad to have as much interest as we appear to  
9 have in the working of the Task Force.

10 We have a full agenda of really phenomenal  
11 speakers today, and I anticipate that we're going to have  
12 equally impressive agendas of speakers at our two public  
13 hearings in April as well in Los Angeles and San  
14 Francisco.

15 But to start off, I want to turn it over to  
16 Elizabeth for a minute, our Executive Director.

17 Elizabeth.

18 MS. PARKER: Well, thank you, President  
19 Pasternak. I have a very important bit of business not on  
20 the agenda. It's Leah Wilson's birthday. That's why the  
21 flowers were in front of her. I won't ask you to sing. I  
22 do, however --

23 MS. KRINSKY: Denny can sing.

24 MS. PARKER: Denny can sing.

25 MR. MANGERS: My union would not allow that. I'm

1 sure.

2 MR. PASTERNAK: You know, I think it also might  
3 be a violation of Bagley-Keene.

4 MR. MANGERS: Probably.

5 MS. PARKER: Sorry for being out of order there.

6 I also want to begin with thanks to many people,  
7 but Francisco Gomez and Linda Katz. Here's Francisco over  
8 here. And Linda, where are you? A shout out to the two  
9 of them. Francisco, of course, is always the operational  
10 person here. And this has been a really, I think, big  
11 effort. And then much of the data that you will be  
12 hearing and seeing is really something that Linda has  
13 gathered at our request. She's done a great job of doing  
14 a deep dive.

15 As Dave mentioned, this is the first of what will  
16 likely be five hearings. And this particular one is  
17 designed to focus on drawing comparisons to other Bar  
18 organizations, both voluntary and mandatory, and also to  
19 look at other types of regulatory bodies. Some of you may  
20 have suggestions as to other people we should think about  
21 inviting at subsequent events, and we'll do that. But  
22 today is really with that focus.

23 That said, we have a broad set of questions, and  
24 our experts are likely going to, because they're here only  
25 today, comment, I hope, on some of these topics that we'll

1 focus on in greater detail going forward.

2 Finally, on a housekeeping note, I think I should  
3 note that our court reporter has asked that we speak  
4 distinctly and clearly and not at a great rapid rate so  
5 she can capture our thoughts.

6 Am I pacing this correctly for you?

7 THE REPORTER: Yes, thank you.

8 MS. PARKER: Okay. So there we go. So I think  
9 that's enough for me. And we should jump into the meat of  
10 the day.

11 MR. PASTERNAK: Thank you, Elizabeth.

12 And I was going to note that we have a court  
13 reporter, and we will at the future public hearings as  
14 well. And that I think will help the workings of our Task  
15 Force. When we prepare our report, we will have what is  
16 actually said, so you are not going to have to devote your  
17 time to the extent that you might otherwise trying to take  
18 down in notes what people are saying.

19 The way we've arranged the day, our speakers each  
20 have 45 minutes -- or most of them have 45 minutes. And  
21 the expectation is that they will be speaking for  
22 15 minutes to 30 minutes, and then we will have an  
23 opportunity to engage them in questions and answers for  
24 another 15 to 30 minutes. So the hope is that we'll give  
25 them the time to give us their presentation, and then

1 we'll have an opportunity to engage in dialogues with them  
2 to the extent that we have questions or want some further  
3 information from them.

4           So with that, Paula Littlewood, if you could come  
5 forward. Paula is the Executive Director of the  
6 Washington State Bar, which is a unified Bar similar to  
7 California in the breadth of its activities, but operates  
8 with a different governance model. Washington is, as  
9 everybody on our Bar knows, is now working to introduce a  
10 Limited Law Technician's Program.

11           And, Paula, I understand that you're going to be  
12 speaking about your own Bar, and draw comparisons with  
13 others, including some of those in Canada, which was the  
14 original basis for the unified Bar model.

15           So thank you very much, Paula, for joining us and  
16 we look forward to hearing what you have to tell us.

17                           PRESENTATION BY MS. PAULA LITTLEWOOD:

18           MS. LITTLEWOOD: Great. Well, thank you, and  
19 thanks for inviting me. I do not have 15 to 30 minutes of  
20 remarks prepared. I actually am going to say a few  
21 things, and thought it might be more productive for us to  
22 engage in dialogue about what's helpful for you to  
23 understand.

24           So as David mentioned, I am the Executive  
25 Director of the Washington State Bar. We are a fully

1 integrated Bar. So when I say "fully integrated," because  
2 we are similar to California, we perform all regulatory  
3 functions under the authority of the Supreme Court.

4 So as you look across the country, not all of the  
5 unified Bars are what I would call fully integrated  
6 because they aren't necessarily doing all of the  
7 regulatory functions.

8 For example, in Oregon, admissions is actually  
9 under the Court, but then the Bar does the rest. So when  
10 I say "fully integrated," it's because we do from the  
11 beginning to the end all of the regulations.

12 We are about 37,000 members, which I know  
13 compared to California doesn't seem that large, but in the  
14 western region, from about Arizona west, we are by far the  
15 largest Bar. So we have 37,000 members, and about 18% of  
16 our membership is out of state.

17 We have been around for 125 years. We just  
18 celebrated our 125th anniversary. We became an integrated  
19 Bar in 1933 under the State Bar Act. But I will say that  
20 our Supreme Court has spent the last 40 to 50 years pretty  
21 much eviscerating the State Bar Act and making it very  
22 clear that they have sole and exclusive authority over the  
23 regulation of the practice of law. So the State Bar Act  
24 still exists in statute, but it doesn't really guide us.

25 Let me just say a few things, and then again I'm

1 just happy to open it up to questions, or I can drill down  
2 into any of the things that would be helpful.

3           We are not a state agency. We are not a judicial  
4 branch agency. We have been described as sui generis. We  
5 have been described as a political instrumentality. And  
6 we have been described as a political subdivision of the  
7 state. And that's pretty significant, because we --  
8 although our employees get the state health care benefits  
9 and they get the state retirement, we are not state  
10 employees. The Court has been clear, the Attorney General  
11 does not represent us.

12           There was a big case about 40 years ago where  
13 they tried to send the state auditor in, and the Court  
14 made very clear that the state auditor had no authority  
15 over the State Bar. So we are this very interesting  
16 neither fish nor fowl.

17           The last thing I would say is there are three  
18 words that we do not use at the Washington State Bar. So  
19 if you see me flinch a little bit today if I hear them,  
20 I'll just set out what they are: We do not use the word  
21 "dues." Dues are voluntary and what you pay to a country  
22 club. We only talk about license fees. We are a  
23 regulatory agency, we are a licensing agency. The people  
24 who are members of the Washington State Bar pay license  
25 fees.

1           We don't use the word "lawyer." We talk about  
2 legal professionals. The Washington State Bar now issues  
3 three licenses: We have a limited practice officer, we  
4 have a limited license legal technician, and then we have  
5 lawyers. So we've changed all our language at the State  
6 Bar to talk about legal professionals.

7           And just one amplification. We're not getting  
8 the LLLT started. We actually have licensed LLLTs in the  
9 field giving legal advice now. So we're well down the  
10 road on the Limited License Legal Technician Program.

11           The last word we don't use is "nonlawyer." We  
12 are the only profession that says "non." There are not  
13 non-dentists, there are not non-doctors, there are not  
14 non-psychologists. So we do not use the word "nonlawyer."  
15 We talk about our public members, we talk about our  
16 community members and we talk about other professionals.

17           So I set that out because I think it's important  
18 to understand that first and foremost the Washington State  
19 Bar is a regulatory agency, our first obligation is to the  
20 public, and our second obligation is we serve our members  
21 in furtherance of serving and protecting the public, but  
22 we have legal professionals. We now have three types of  
23 legal professionals that we regulate.

24           So I'll end there, and then I'm happy to jump  
25 into anything that would be helpful.

1 MR. PASTERNAK: Thank you, Paula.

2 Questions? Comments? Miriam?

3 MS. KRINSKY: Thank you. That was fascinating.

4 And actually, I want to thank the staff who did all of  
5 this work on compiling the differences between State Bars.  
6 I think that this is really invaluable for us. And I  
7 don't think I've seen our organization in the past take  
8 this comprehensive look at how we compare to others, and  
9 where did we start, and what is some of our legal backdrop  
10 in history and so on.

11 So with that in mind, I had a couple of questions  
12 for you, and maybe if I can just throw them out.

13 MS. LITTLEWOOD: Yes.

14 MS. KRINSKY: I was intrigued by your reference  
15 to the fact that your Supreme Court has made clear over  
16 time that they are the sole authority in charge of  
17 overseeing the practice of law. And actually, there's  
18 case law as well from our Supreme Court in the context of  
19 when there was a challenge to the setting of dues and the  
20 reference of licensing fees being reaffirmed discipline  
21 fees.

22 MS. LITTLEWOOD: Yes, yes.

23 MS. KRINSKY: But I don't think our Court has had  
24 multiple opportunities to really enlighten or sort of put  
25 meat on the bones of what does that mean given the fact

1 that the starting point is for our Bar as well, that our  
2 Supreme Court is the one solely in charge of that, you  
3 know, regulatory disciplinary function when it comes to  
4 those in the practice of law.

5           So I'd be interested to hear more about what are  
6 some of the ways and particular issues that have come to  
7 your Court; including, have they looked at the issues of  
8 the propriety of who should be in charge of setting those  
9 licensing fees. Have they looked at other areas where  
10 your State Bar functions, and sort of the separation of  
11 powers issues as between the authority of the Court.

12           MS. LITTLEWOOD: Yes, yes, yes.

13           MS. KRINSKY: And then the second area I'd be  
14 interested to get your thoughts are on, your board looks  
15 similar in size to our board. I actually was intrigued  
16 that some boards are huge, which I thought was odd. And  
17 I'm kind of curious as to what those boards really do.  
18 But your board is similar in size to ours --

19           MS. LITTLEWOOD: Yes.

20           MS. KRINSKY: -- and I'm kind of interested in  
21 knowing who appoints the members of the board, and how  
22 that appointment is processed and composition of the board  
23 works.

24           So I'm interested in hearing more of those.

25           MS. LITTLEWOOD: Yes, yes, yes, great.

1           So the separation of powers -- let me just start  
2 by saying that for many of us looking at the California  
3 system, it's kind of mind-boggling in the sense of the  
4 violation of the separation of powers is so stark. And I  
5 refer specifically to the fact that your chief  
6 disciplinary counsel is confirmed by the State Senate, and  
7 that your State Legislature sets the license fee. Our  
8 Court would never allow that.

9           And so the way we're set up, I hire and fire  
10 chief disciplinary counsel. So I am hired by the Board of  
11 Governors. I report to the Board of Governors, but I have  
12 a dual report to the Supreme Court. So if you look at our  
13 org chart -- which I brought a copy of, if you want me to  
14 leave it -- it's got me, and then it's got the Board of  
15 Governors, and then it's got the Supreme Court. But I  
16 have a dotted line that goes from the Executive Director  
17 straight to the Supreme Court. And the reason for that is  
18 because our Board of Governors has no regulatory  
19 authority.

20           And post North Carolina, that's going to be  
21 really huge, right? You're not going to want any of your  
22 Board of Governors doing anything that could be construed  
23 as regulatory.

24           So our Board of Governors does nothing  
25 regulatory. I'll drill down a little bit on that in a

1 minute, because, of course, they set the budget, which  
2 could be construed as impacting some of our regulatory  
3 functions.

4           So for regulatory things that we do as the  
5 regulatory agency, I actually am directly responsible to  
6 the Supreme Court. So I think that's pretty different.  
7 One thing that's been a little unusual about the  
8 Washington State Bar nationwide I think is that our Board  
9 of Governors sets its budget without review by anybody,  
10 review by the Court or anybody. We set the license fee,  
11 so we will notify the Court what we're doing with the  
12 license fee. They reserve the right to determine if it's  
13 reasonable. But in most states, the Supreme Court would  
14 have to approve an increase in the license fee. And our  
15 bylaws are set by the Board of Governors without review by  
16 the Court.

17           Now, I will say, post North Carolina, we are now  
18 beginning conversations with our Court that we think they  
19 should at least look at our budget. And with the license  
20 fee that we should have probably a more formal process  
21 that they're -- you know, if they're not necessarily  
22 approving the license fee, they're -- I mean, they were  
23 already reviewing it.

24           And then we just went through a big governance  
25 review similar to you. Ours started about the time yours

1 ended, so we've just finished that. And we've made a  
2 recommendation that the Supreme Court approve any of our  
3 bylaw changes. Again, post North Carolina, I think that's  
4 going to be even more critical; that anything we do, the  
5 Court sort of reviews and has the opportunity -- of  
6 course, consistent with North Carolina, has the  
7 opportunity to say we don't leave.

8           So is there more on the structure piece that  
9 would be helpful, the case history?

10           MS. KRINSKY: Yeah.

11           MS. LITTLEWOOD: Okay. So let me give you some  
12 examples of some of the cases. I already talked about  
13 when they tried to send the state auditor in and the  
14 Supreme Court said very clearly, No.

15           There was a union movement within the staff of  
16 the Bar about 20 years ago, and the legislature tried to  
17 impose state collective bargaining, and the Court came in  
18 and said, Absolutely not. You cannot determine whether  
19 the State Bar employees can become unionized.

20           I'm trying to think about some of the other  
21 cases. It's a long line of cases. But the consistent  
22 language is either sole and exclusive authority over the  
23 regulation of the practice of law, or plenary authority  
24 over the regulation of the practice of law.

25           So really the only thing left in the State Bar

1 Act that we still ascribe to, so to speak, actually leads  
2 into your second question, which is the State Bar Act  
3 dictates how large our Board of Governors can be. And so  
4 the Board of Governors can have 15 members, including the  
5 president. By bylaw, our board is actually 17 members.  
6 We have 14 governors who can vote, and then we have three  
7 presidents. We have a president-elect, a past president  
8 and a president. The president may vote in the event of a  
9 tie and does not have to.

10           So the bylaws are really set up to have the  
11 governors have -- it's sort of a governor strong, you  
12 know, trustees strong, officer weak, so to speak.

13           Through the governance review, we are now making  
14 a recommendation to add three public members, because we  
15 have no public members and we think that's been a real  
16 shortcoming for a regulatory agency. We're in the process  
17 of defining what those three public members will look  
18 like. And we're thinking that at least one of them will  
19 be a other limited license practitioner.

20           So we're right now in the middle of reviewing all  
21 the bylaws. Some of the preliminary indications, though,  
22 are that we will allow any of our legal professionals to  
23 be an officer of the Bar, so that could mean that a LLLT  
24 or an LPO could become president of the Bar. I don't  
25 think it will happen for a while because their numbers

1 aren't huge.

2           But I outline that because I think it's important  
3 to understand the real transition that's going on in  
4 general for the profession, that we really need to be  
5 moving to understanding that it's not just lawyers. And  
6 so that's why I make the point that we only talk about  
7 legal professionals now because we have three licenses.

8           And I suspect that's really going to be the way  
9 the rest of the nation goes. Maybe not how we did it but,  
10 you know, that's a much bigger trend of, We've got to  
11 start letting go, and we've got to start giving pieces of  
12 what we do away to other folks, just like medicine did  
13 40 years ago.

14           If you look at the North -- I assume everybody is  
15 familiar with the North Carolina case, because I keep  
16 referencing it. I was thinking about it on the plane  
17 coming down last night, that we're actually kind of the  
18 opposite of North Carolina, because what was happening  
19 with the Dental Board, right, was they were trying to run  
20 the teeth whiteners out of business. And we've done the  
21 exact opposite in Washington State. We've actually  
22 created the teeth whiteners, right, and said, "Come on in  
23 and be part of our group, and we'll give you a license and  
24 go out and help the public."

25           MS. KRINSKY: Could I ask two follow-ups?

1 MR. PASTERNAK: Well, I do want time for other  
2 people to ask questions. So let's go to Denny and Joanna.  
3 And then if there's time, Miriam, we'll come back to you.

4 MR. MANGERS: Welcome. And first of all, I am  
5 happy to hear that you've decided that there is some value  
6 of having public members on a regulatory body. That's  
7 heartening.

8 So your comments seem to suggest that your  
9 association sees profound implications from North  
10 Carolina. Based on what you know about the way we're  
11 organized, what do you think we're not getting so far  
12 about those ultimate implications in terms of how we  
13 currently are constituted and operating?

14 MS. LITTLEWOOD: Well, let me answer that by  
15 telling you what we're doing. So we had been watching the  
16 North Carolina cases, as most of us had, for a couple of  
17 years, right? We saw it coming. We were watching it work  
18 its way through. So we, even before the U.S. Supreme  
19 Court handed down its decision, had started asking certain  
20 of our bodies to stop doing things that we thought could  
21 be interpreted as anti-competitive. For example, our  
22 Practice Law Board was issuing cease and desist letters in  
23 UPL cases. Cases, I use quotes.

24 And we had asked them to suspend that until the  
25 decision came down from North Carolina, because we knew

1 that that was going to be -- it was pretty clearly where  
2 the Supreme Court was going to come down. I don't think  
3 any of us were surprised.

4           So what we've done, actually before the decision  
5 came down, is we retained outside counsel, antitrust  
6 counsel. They were helping us specifically with the cease  
7 and desist issue. The decision came down from the U.S.  
8 Supreme Court. So now what we're doing is we are  
9 literally working through everything we do as an agency,  
10 as a Bar, to determine if anything we're doing could be  
11 seen as anti-competitive.

12           So some of you may have seen some not very  
13 accurate reporting in Bloomberg in the ABA Journal  
14 recently saying that we had suspended all ethics opinions  
15 by our Committee on Professional Ethics, which is not  
16 accurate.

17           What we actually said to our Committee on  
18 Professionals Ethics was, Can you hang on for a second,  
19 particularly on ethics opinions that could be seen as  
20 anti-competitive; so anything that has to do with  
21 advertising or fees or anything like that.

22           And so we're working through very carefully lots  
23 of different things that we do, whether it's on the  
24 regulatory side and probably, more importantly, on the  
25 nonregulatory side, to determine: Should we be doing it?

1 If we keep doing it, what involvement does the state after  
2 the Supreme Court need to be involved?

3           So I would suggest to any Bar that they should be  
4 doing a very methodical look at everything you do through  
5 that lens. I mean, if you go into our general counsel's  
6 office, there's a huge whiteboard. And general counsel's  
7 office, all of the assistant general counsels, they just  
8 sit around and they're brainstorming all the different  
9 things that we need to have antitrust counsel and us look  
10 at. So let me give an example.

11           We determine that in our character and fitness  
12 hearings, if somebody is denied through a character and  
13 fitness the ability to take the Bar exam, they can appeal,  
14 but sometimes they don't appeal. And we realize that when  
15 they don't appeal, we should be having our state actor  
16 review that. So we've worked out with the Supreme Court a  
17 way for us to send that up so that the Court can review  
18 that. Do you see what I mean? So we want to make sure  
19 the state actor is touching anything that we do that could  
20 be determined to be anti-competitive.

21           MR. MANGERS: Actually, that was plenty in terms  
22 of examples.

23           If I may just ask one last question: To what  
24 degree do you think the fact that you're integrated, as  
25 you put it? You're deliberately not using words like

1 "unified, deunified" or whatever, you apparently see  
2 yourself as a hybrid. What are the applications vis-a-vis  
3 North Carolina around the fact that you're integrated?

4 MS. LITTLEWOOD: Right.

5 MR. MANGERS: And then, if you will, just take a  
6 couple of minutes and indicate why you think you are  
7 integrated, should remain integrated, what the advantage  
8 is or disadvantage is as it's paired with your regulatory  
9 function --

10 MS. LITTLEWOOD: Yes, great question.

11 MR. MANGERS: -- because that's one of the things  
12 we're about here.

13 MS. LITTLEWOOD: Yes, great question. Let me  
14 start with the first one. About five years ago -- so for  
15 the last eight years we've been doing a lot of work to  
16 become a lot more focused and honed about who we are as an  
17 organization. And we developed what we call our two  
18 mission focus areas. And one is ensuring competent and  
19 qualified legal professionals. And the second mission  
20 focus area is promoting the role of legal professionals in  
21 society.

22 And so we worked through everything we were doing  
23 as a Bar and eliminated some of our programming.

24 And one of the questions we started with, which  
25 is a tough question, and it started within the executive

1 management team, so that's the staff leadership team  
2 before we took it to budget and to audit and to the board.  
3 And the first question we asked is: Should we be a  
4 unified Bar? And I can tell you that that gets to be a  
5 pretty tough conversation when you really have it, right,  
6 because sometimes you'll get the answer, Well, of course  
7 if we were starting from scratch today, we should not be a  
8 unified Bar. And I said, That's not an answer you can  
9 give today. If you think we should not be a unified Bar,  
10 then let's have that conversation.

11           So I can tell you that as we worked through that  
12 whole process, which took about a year, and we started --  
13 what our moniker to it was, we were a mile wide and an  
14 inch deep, and we were trying to become an inch wide and a  
15 mile deep, right, become much more focused.

16           We determined, and I still believe, that as a  
17 unified Bar, we are much more robust. So if you think of  
18 our first mission focus area, ensuring competent and  
19 qualified legal professionals, as a unified Bar we are a  
20 much more robust organization, able to advance that  
21 mission. Because as the mandatory regulatory Bar, we have  
22 immediate access to the 37,000 lawyers, right.

23           So our vision is that we can ensure competent and  
24 qualified legal professionals through two things: One  
25 through regulation and one through services and

1 assistants. So let's take some examples.

2 Ethics line, right? I assume you guys have an  
3 ethics line, right, where lawyers can call. They have an  
4 ethical dilemma. Probably not regulatory, probably not  
5 mandatory, but does it further our mission of protecting  
6 the public and ensuring a competent and legal  
7 professional? Absolutely. That any of our legal  
8 professionals can call this ethics line and say, "I'm not  
9 quite sure how to handle this situation."

10 Another example, clearly a professional  
11 association function, which is our law office management  
12 assistance program, right? So you can come in, and they  
13 can give you advice on how to set up your practice and  
14 things like that. Is that ensuring competent and  
15 qualified legal professionals? Absolutely. If we've got  
16 somebody who can help someone set up a law practice or  
17 LLLT practice, ensuring that it's done ethically, right,  
18 and understanding all of the trust account rules, is that  
19 furthering our mission as a regulatory agency to protect  
20 the public? I think absolutely.

21 So our answer is, as an integrated Bar, as a  
22 unified Bar, we are much more robust and better able to  
23 support the legal professionals that we oversee and then  
24 serve the public. So I don't think post North Carolina  
25 you're going to see us going down the road of

1 deunification.

2 MR. MANGERS: Thank you.

3 MS. LITTLEWOOD: I think Friedrichs might have  
4 changed that, but now Friedrichs is off the table, so...

5 MR. MANGERS: All for me.

6 MR. PASTERNAK: Thank you very much, Paula.  
7 Joanna?

8 MS. MENDOZA: I was going to ask if you could  
9 describe the Eugster case for the Board, if that's the  
10 case, and if your State Bar is doing anything about the  
11 case that you can actually discuss? Is the Board talking  
12 about anything --

13 MS. LITTLEWOOD: No.

14 MS. MENDOZA: -- in response to that?

15 MS. LITTLEWOOD: No.

16 MS. MENDOZA: Can you describe what the case is  
17 to the Bar?

18 MS. LITTLEWOOD: Sort of, because I was named. I  
19 think my answer indicates to you that it's not a big deal  
20 to -- I mean, it's a big deal to us; but, no, the Board is  
21 not discussing it. Eugster is sort of a -- that's not the  
22 first time he's sued us.

23 So the case was -- the original case was an  
24 interesting theory of saying that we don't have the right  
25 to discipline and regulate. That was dismissed. I know

1 he's filed another case. I really can't -- you'd have to  
2 speak to general counsel.

3 MS. MENDOZA: Does it have anything to do with  
4 regulation issues --

5 MS. LITTLEWOOD: Yeah.

6 MS. MENDOZA: -- mandatory bar issues?

7 MS. LITTLEWOOD: Yeah. He would claim it as,  
8 absolutely.

9 MR. PASTERNAK: It sounds like some of the  
10 litigation we get.

11 MS. LITTLEWOOD: I mean, we get -- yeah, we get  
12 so many of these cases. Yeah, sorry.

13 It's interesting, because I think across the  
14 nation people have followed the case. And we certainly  
15 get questions about it. But I think just by my answer you  
16 can tell, it's not that we don't take it seriously, but we  
17 get a lot of these lawsuits. And, you know, it was  
18 dismissed.

19 MR. PASTERNAK: Is it Uster, U-s-t-e-r?

20 MS. LITTLEWOOD: E-u-g-s-t-e-r.

21 MS. MENDOZA: It's one of the unification cases  
22 that the Bar should be following.

23 MR. PASTERNAK: Thank you.

24 MS. LITTLEWOOD: Yeah, they did that, not us.

25 MS. MENDOZA: Do you follow the Fleck case at

1 all?

2 MS. LITTLEWOOD: Hm-mm.

3 MR. PASTERNAK: Paula, one question that I have  
4 before -- I think Mary was next.

5 Can you tell us what, if anything, the Washington  
6 State Bar does in support of legal services, legal  
7 services for the Court issues, court funding, independence  
8 of the judiciary, things like that? Are you actively  
9 engaged in those services?

10 MS. LITTLEWOOD: Yeah, yeah, yeah. So we have a  
11 mission statement. And under our mission statements we  
12 have five guiding principles. Those are our core ideals.  
13 The five guiding principles are: Access to justice,  
14 diversity and inclusion, ensuring a fair and impartial  
15 judiciary, public legal education, and then ensuring the  
16 competency and ethics of the Bar. So yes, those are all  
17 things that are huge to us.

18 We have a huge public service program. So we run  
19 a moderate means program where we pay for staffing at all  
20 three law schools, and the staff at the law schools train  
21 the students to do intake of the moderate income clients.  
22 And then we recruit the lawyers, and we train them, and  
23 then they match them.

24 We have a Call to Duty for Veterans. We have a  
25 very active Pro Bono and Public Service Committee. We on

1 our license form do an opt-out of \$50 that goes to the  
2 Campaign For Equal Justice, which is how part of the  
3 funding for Civil Legal Aid is done in Washington State.  
4 We have a second opt-out for our Bar Foundation, which is  
5 also \$50. Our Bar Foundation is solely set up to raise  
6 money and then give all the money to the Bar Association  
7 for public service and diversity programming.

8           So I'm guessing the question is: What are we  
9 doing on our professional association side, and how much  
10 are we doing? We're doing a lot.

11           MR. PASTERNAK: Thank you. Your answer raised  
12 one other question in my mind. How much are your license  
13 fees? Yeah, license fees. I want to make sure I use the  
14 right word.

15           MS. LITTLEWOOD: Thank you. So right now they're  
16 385. So you may know that five years ago through a  
17 membership referendum our license fee was rolled back from  
18 \$450 to 325. So we just raised them to 385 this last  
19 year. And we'll probably raise them again in 2018.

20           MR. PASTERNAK: They're comparable to ours. Very  
21 close.

22           Danette, and then Miriam.

23           MS. MEYERS: Thank you.

24           Thank you very much for coming. Your words were  
25 incredibly enlightening. I just have one quick question

1 for you.

2           And that is, part of our mission in protecting  
3 the public is -- and I see this in my day job, my real job  
4 as a D.A. -- that is to make the injured party whole. And  
5 this Bar does that with the Client Security Fund. They  
6 really try to do that. And that fund needs to be  
7 increased. And I think that's something that our  
8 legislature is looking at, and I'm hoping that Elizabeth  
9 is able to increase that fee to the Client Security Fund,  
10 to help those out there who have been injured by bad  
11 lawyers to make them whole again.

12           What does your Bar Association do? Do you have  
13 something that is akin to the Client Security Fund? And  
14 who regulates it? Who increases that fund if you do have  
15 it?

16           MS. LITTLEWOOD: Yeah. So we had actually one of  
17 the first client protection funds in the country. So we  
18 do it similar to you. The assessment right now is \$30 per  
19 member.

20           The way it's set up is, it's a restricted fund,  
21 so for anybody who does finance it, it's a truly  
22 restricted fund. The trustees of the fund are the Board  
23 of Governors. And just like with the license fee, it's  
24 the Board of Governors who determines whether that fee  
25 goes up or down.

1 MS. MEYERS: Thank you.

2 MS. LITTLEWOOD: Again, we would talk to the  
3 Court and tell them we're planning to raise it. And,  
4 again, post North Carolina, we may change and have the  
5 Court be more formal about if we raise it, you know,  
6 blessing it.

7 MS. MEYERS: Over time has it been raised?

8 MS. LITTLEWOOD: The last time we raised it was  
9 about maybe eight years ago. We went from 15 to 30. We  
10 doubled it. And, I mean, you know how client protection  
11 works (indicating).

12 MS. MEYERS: Exactly.

13 MS. LITTLEWOOD: And so there was actually some  
14 talk last year --

15 MR. PASTERNAK: For the record, that was a hand  
16 going up and down.

17 MS. LITTLEWOOD: Oh, I'm sorry, up and down,  
18 thank you.

19 There was actually some discussion started at  
20 budget about it last year about taking the fee down. And  
21 I said, "Absolutely not." Because, you know, you're just  
22 around the corner from that next --

23 MS. MEYERS: From that next incident.

24 MS. LITTLEWOOD: Yeah. So at this point it's a  
25 Freudian...

1           Budget and audit actually met yesterday, because  
2 we're starting the discussion about raising the license  
3 fee, and there was no discussion about the client  
4 protection assessment. I think we'll probably stay flat  
5 at 30 for now.

6           MS. MEYERS: Is there a percentage of it that is  
7 paid?

8           MS. LITTLEWOOD: Yeah.

9           MS. MEYERS: So, for instance, the client here,  
10 the injured party doesn't get 100%.

11          MS. LITTLEWOOD: Yeah. We've done a cap at  
12 75,000.

13          What happens is they bring the claims forward,  
14 you know, as they get them. And we do an initial payment  
15 of \$5,000. And then at the end of the year, then we can  
16 figure out a pro rata if we need to. Otherwise, there's a  
17 cap of 75,000.

18          And then there's discussion over the years, and I  
19 think the sense now is that we try and keep 25% of the  
20 fund -- you know, we don't try and spend it all the way  
21 down when we do get the really bad actor. We try and keep  
22 a little bit of it to carry it forward.

23          What's your assessment?

24          MS. MEYERS: I think it's \$30.

25          MS. LITTLEWOOD: Is it \$30?

1 MR. PASTERNAK: \$40.

2 MS. MEYERS: \$40. It needs to be raised.

3 MR. PASTERNAK: And the maximum payout is  
4 \$100,000.

5 MS. LITTLEWOOD: Okay.

6 MR. PASTERNAK: And funds are carried over. It's  
7 not all paid out in any given year.

8 MS. LITTLEWOOD: And we are assessing the LLLT,  
9 and we actually have started assessing our pro hac vices.  
10 Yeah. Which is a big, big revenue generator, the pro hac  
11 vice in general. And so we've started assessing them the  
12 \$30.

13 MR. PASTERNAK: Miriam, you had a question.

14 MS. KRINSKY: Yes, I have of a couple of  
15 follow-ups. I'm sorry. Again, I'm going to launch a  
16 couple at you.

17 First of all, I appreciated, and I think you put  
18 it very well, in recognizing that when we talk about the  
19 core mission of all of our State Bar organizations around  
20 protection of the public, that you can't take a myopic  
21 view that that's simply about punishment and discipline.  
22 That if you really want -- if you really take to heart the  
23 mission of protecting the public, there are other  
24 functions that have to be inherent in the organization.  
25 It has to be about education; it has to be about

1 supporting struggling lawyers, helping them find their  
2 way, you know, onto the right path before they end up in  
3 our discipline system. So I think you put that very well,  
4 and I appreciated that.

5           So I had two follow-ups; one on the fees and one  
6 on the Board, the composition that I don't think you quite  
7 got to, and then a third question about your Supreme Court  
8 oversight.

9           On the fees, I was just curious whether you're  
10 aware of any other large Bar organization in the nation  
11 where the legislature has the type of control over setting  
12 fees or dues that ours does in California?

13           MS. LITTLEWOOD: I am not.

14           MS. KRINSKY: Okay.

15           MS. LITTLEWOOD: I think you're the only one.

16           MS. KRINSKY: That confirms what our research  
17 shows. We're alone in the nation --

18           MS. LITTLEWOOD: Yeah, I think so.

19           MS. KRINSKY: -- in that regard.

20           The second question I had was in relation to your  
21 14 board members, other than the president, and in  
22 relation to election of officers, how are the 14 appointed  
23 or selected or elected?

24           And second of all, how are your officers elected.

25           And then the final question was, again, going

1 back to your Supreme Court oversight. What role does your  
2 Supreme Court play in regard to the Bar exam, or  
3 admissions or the area of admissions?

4 MS. LITTLEWOOD: Right. Sorry, I didn't get to  
5 that.

6 So the 14 members of the Board of Governors, 11  
7 are elected by district, so congressional districts, and  
8 then the Seventh Congressional District, which is where  
9 Seattle is, is divided into two. So we take two from  
10 there.

11 And then the three other members are at large.  
12 One is designated to be a newer, young lawyer; and then  
13 the other two are at large, and the -- looking for folks  
14 from traditionally under-represented backgrounds. But  
15 that's defined pretty broadly in the bylaws, because it  
16 includes regional as well as, you know, ethnic and race  
17 and things likes that.

18 MS. KRINSKY: And who selects them?

19 MS. LITTLEWOOD: They are selected by the Board.  
20 So in June, the applicants will come before the Board and  
21 interview, and then there's a vote. And then that's the  
22 same for the president. The president-elect is selected  
23 by the Board of Governors.

24 I will say two things about our Governance Task  
25 Force recommendations. And one was that the president

1 should actually be selected from the Board of Governors.  
2 So the way it works right now, anybody can run for the  
3 presidency as long as they're an active member and in good  
4 standing. So they could have never served on the Board of  
5 Governors and run for the presidency. So the Board of  
6 Governors did not take that recommendation.

7           And the three public members, there's a lot of  
8 discussion about how those three should be selected. And  
9 right now it's that they will be selected by the Board of  
10 Governors.

11           Again, I think North Carolina may open up that  
12 discussion again.

13           We made a lot of arguments, some of us, that we  
14 should have a portion of the Board of Governors appointed  
15 by the Supreme Court, like some of your members. Even  
16 just as a prestige thing. You've been appointed by the  
17 Supreme Court, or for you guys appointed by the governor,  
18 but that was kind of a nonstarter. So at this point, the  
19 governors are still elected.

20           MS. KRINSKY: And Supreme Court oversight over  
21 admissions and the Bar exam.

22           MS. LITTLEWOOD: Admissions. And so -- maybe I  
23 mentioned this earlier, our Board of Governors actually  
24 determines what the Bar exam is. So when we made the  
25 decision, we were one of the very early states to move to

1 the uniform Bar exam. That was actually a decision of the  
2 Board of Governors. I think in most states that would be  
3 a decision by the Supreme Court.

4           Again, we let our Court know. We had  
5 conversations with them. We made sure that they were okay  
6 with it.

7           Post North Carolina, I think that might look  
8 different. We would probably again want the Court to  
9 bless the decision more formally.

10           And then as far as admissions is concerned, after  
11 somebody passes the licensing exams, whether it's an LPO,  
12 or LLLT or a lawyer, we send up the names, and then the  
13 Court enters a court order.

14           So a lot of our regulatory stuff within the  
15 discipline and the admissions, we're tied pretty tightly  
16 to the Court. So, again, vis-a-vis North Carolina we're  
17 feeling okay about a lot of them.

18           We have an extremely close working relationship  
19 with our Court, extremely close, which is pretty unusual I  
20 think in the country.

21           I know George is here from Wisconsin. George and  
22 I have colleagues in other parts of the country. And  
23 Elizabeth, that -- the Chief and the Executive Director  
24 don't even talk. The Chief and I talk almost weekly.

25           So we meet with our Court twice a year. I mean,

1 we have a very close working relationship with our Court.

2 MR. PASTERNAK: I know Leah has a question as  
3 well.

4 MS. WILSON: Oh, okay.

5 MR. PASTERNAK: I thought.

6 MS. WILSON: Yes, I have two different questions.  
7 I'm going to ask my second one first, and I hope I'm  
8 clear.

9 One of the -- you keep referring to your Board of  
10 Governors, and one of the things that I'm wondering about  
11 is what other sort of committee or oversight bodies you  
12 have set up? So, for example, here we have a committee of  
13 Bar examiners that approve the Bar exam. We don't have  
14 a -- the Board of Governors doesn't do that. Our Client  
15 Security Fund has at least one committee.

16 I've instructed someone new to the organization  
17 about the multiplicity of committees that we have.

18 So how does your organization work in that  
19 regard?

20 MS. LITTLEWOOD: Yeah, yeah, yeah. Hold on.  
21 Yeah, I forgot to bring it up. I brought a visual aid for  
22 you. I can pass it around. Here's the org chart.

23 So we have a lot of entities. We have over 900  
24 volunteers involved with the organization on any given  
25 day. So we have Committees, we have Boards, we have

1 Councils, and then we have a fourth category, which is  
2 Supreme Court created Boards. We'll talk about those in a  
3 minute. And then we have sections. So we have 28  
4 practice sections.

5           The committees are committees of the Board of  
6 Governors, and they're doing more what I would call  
7 professional association functions. So our Pro Bono and  
8 Public Service Committee are committees on professional  
9 ethics. Okay. So those are committee of the Bar doing  
10 the work of the Board of Governors.

11           Then the "Boards" is a term of art. Boards are  
12 doing regulatory functions. So we have a board of Bar  
13 Examiners. We have a Character & Fitness Board. We have  
14 a Disciplinary Board. So if you're actually a board,  
15 you're performing a regulatory function. And a lot of  
16 what they -- almost everything that they're going to do is  
17 dictated by Court rule. Okay.

18           Then you have the practice sections, which I  
19 think you have as well. We have 28 practice sections.

20           Then we have six Supreme Court created boards,  
21 which we affectionately call "our unfunded mandates." So  
22 these are boards that have been created by the Supreme  
23 Court, but the State Bar has been charged with staffing  
24 and funding them.

25           And so some of them are regulatory, and one of

1 them is not. So our Access to Justice Board is actually a  
2 board of the Supreme Court, but we fund it and we staff  
3 it. And then we have our Limited Practice Officer Board.  
4 You can guess what that is. We have our Limited License  
5 Legal Technician Board. We have our Disciplinary Board.  
6 We have our MCLE Board. And then we have our Practice of  
7 Law Board.

8           And the Practice of Law Board is changing. It's  
9 not doing as much enforcement in UPL. They're actually --  
10 I actually met with them last week for two hours. They're  
11 doing a lot of work. We're trying to figure out what's  
12 the next legal professional. Right. Because we have  
13 LPOs. We have LLLTs. We have lawyers. And we know that  
14 there's going to be another one. There's just got to be  
15 another one out there who can help serve the public. And  
16 so they're spending a lot of time trying to figure out  
17 what's the next legal professional going to be.

18           So those boards -- some of them have revenue that  
19 comes in. So LPO and LLLT have license fee revenue that  
20 comes in to help offset the cost. Actually, LPO more than  
21 pays for itself.

22           MCLE we make -- brings in a lot of revenue. I  
23 think you guys do MCLE as well, right?

24           And then some of the other ones are not funded,  
25 so we pay for them.

1 MS. WILSON: And then my second question has to  
2 do with the sections. So do the sections pay there in  
3 Washington a separate -- I could call that a due --

4 MS. LITTLEWOOD: Those are dues.

5 MS. WILSON: Those are dues.

6 MS. LITTLEWOOD: Because they're voluntary, yes.

7 MS. WILSON: And do you have any policy that says  
8 that those dues must fully cover the cost of the  
9 operations? How are the sections supported by --

10 MS. LITTLEWOOD: Great question, yeah.

11 So we charge -- per-member charge is what we call  
12 it for each member of the section who signs up. We take a  
13 portion of the dues to help cover our cost to staff the  
14 sections and sort of support the sections.

15 We are subsidizing that a little bit too much.  
16 And so we're in a bit of a go-around right now with our 28  
17 sections, might be the best way to put it. It's a little  
18 contentious right now.

19 MR. PASTERNAK: Stick around for a little while.

20 MS. LITTLEWOOD: I've heard you're going through  
21 some similar things.

22 And this is an age-old problem nationwide, right?  
23 "Sections," can't live with them, can't live without them.  
24 This sort of sense that it's their money and they are  
25 their own organization. So we're spending a lot of time

1 saying, "Uh, no, you're entities of the Washington State  
2 Bar." They've had their own set of fiscal policies.  
3 We're going to pull them under our fiscal policies.  
4 They've been able to build up big reserves. We're having  
5 conversations about how to manage those reserves.

6 So we're sort of trying to say we're all one  
7 entity here. Yes, you bring in these dues, but you're  
8 still a part of the Washington State Bar.

9 Is that helpful?

10 MS. WILSON: Yeah.

11 MS. LITTLEWOOD: Okay.

12 MR. PASTERNAK: Elizabeth, I think, has a  
13 question or two as well.

14 MS. PARKER: One follow-up question, and then a  
15 new topic.

16 Do you have an annual meeting?

17 MS. LITTLEWOOD: No. We haven't done an annual  
18 meeting for decades.

19 MS. PARKER: And why was that -- or why is that?

20 MS. LITTLEWOOD: It precedes me when they did  
21 away with the annual meeting it. When I was Assistant  
22 Dean at the University of Washington, the President of the  
23 Bar at the time tried to do a big revival of the annual  
24 meeting in 2000, and it was just an absolute flop.

25 I think a couple of things. It's very hard. You

1 know, practice has become so much more specialized in this  
2 day and age, and so trying to put on programming that  
3 appeals to that many people -- you know, you have so many  
4 tracks, I think was part of it. I think they just weren't  
5 getting the numbers.

6           Where we're putting a lot of our effort is into a  
7 lot of our sections do what are called a mid-year meeting,  
8 and so it's midway through the year. And really trying to  
9 build community around the mid-year meetings. So Family  
10 Law may do a mid-year. I'm trying to help them get those  
11 numbers up and get more people coming to those. But it's  
12 just been an absolute nontopic for us for decades.

13           MS. PARKER: Do you know what the practice is  
14 across the nation?

15           MS. LITTLEWOOD: A lot of folks are still doing  
16 annual meetings. In the western states I know a lot are  
17 still doing it. And some of them still go out of state.  
18 You know, they'll still go to Hawaii, you know, go to --  
19 and our -- and I think that part of the history, too, was  
20 that there were a couple of annual meetings where they  
21 took them, one to Hawaii and one to, you know, British  
22 Columbia right next door. And I think that became a bit  
23 of a controversy.

24           In fact, in our bylaws now it says that our Board  
25 of Governors cannot meet out of state. Because sometimes

1 we'd go, you know, to Portland, or to Coeur D'Alene, you  
2 know, right -- or up to Canada. And now the bylaws  
3 actually say we can't do meetings out of state.

4 MS. PARKER: On a new topic. I'm curious to know  
5 whether there's anything to be learned from our Canadian  
6 colleagues --

7 MS. LITTLEWOOD: Yeah.

8 MS. PARKER: -- and the way they manage their  
9 legal --

10 MS. LITTLEWOOD: Yeah. So one thing really  
11 important, they have no unified system. So they -- the  
12 way the Canadian system works is there's the Canadian Bar  
13 Association, so sort of similar to the American Bar  
14 Association. And then within each province there's a  
15 branch. So in British Columbia, there is actually the  
16 Canadian Bar Association, British Columbia Branch, if that  
17 makes sense. That's all voluntary.

18 The regulation is all handled through law  
19 societies. So each province has a law society. So Law  
20 Society of British Columbia. You know, Ontario actually  
21 has a different name. So that's where the regulation  
22 happens. They have a very strict -- you keep them  
23 separate.

24 So George and I, and we're trying to encourage  
25 Elizabeth, are very involved in an organization which is

1 all of our counterparts from around the world. And so we  
2 learn a lot about how Australia, England, Europe, Asia,  
3 Canada, how all of them are handling these regulatory  
4 issues, and it is invaluable.

5 I would say -- one of the things that we don't  
6 understand very well in the United States, I would say  
7 that most lawyers have no idea that -- we are a  
8 self-regulated profession, and they have no idea why. I  
9 would say in other countries there is a much, much better  
10 understanding of why lawyers are self-regulated, not only  
11 by lawyers, but by the public.

12 And so that's certainly one thing that I've taken  
13 away from IILACE, which is this organization that we have  
14 integrated hugely into our language and how we run the  
15 Washington State Bar. We actually go into every ethics  
16 class at every law school now to talk to them about,  
17 "You're going to be joining the only self-regulated  
18 profession in the United States and this is why it  
19 matters." I speak at every law school orientation now.  
20 So that first day they step foot in law school, they're  
21 getting the message about what a big deal it's going to be  
22 once they are handed that license, to be a member of the  
23 only self-regulated profession in the United States.

24 One big difference between us and Canada -- so  
25 when I say "self-regulated," I put it in quotes because

1 all of us ultimately report to our Supreme Courts. In  
2 Canada, the law societies are truly self-regulated. So  
3 for example, if we do a disbarment case and we recommend  
4 disbarment, it's only a recommendation to the Supreme  
5 Court, right. And then the Supreme Court has to  
6 ultimately pull the ticket. In Canada, the Law Society  
7 actually pulls the ticket. So they are truly  
8 self-regulated.

9           But that creates some interesting issues that we  
10 probably don't have time to talk about today. There are  
11 some advantages to our system, and let me give you one  
12 really clear example of that, which is the LLLT, the  
13 Limited License Legal Technician in Washington State. I  
14 want to be really clear. Our Bar Association fought the  
15 LLLT. Our Board of Governors hated the idea, and they  
16 fought it until the end. But because we're not truly  
17 self-regulated like a Law Society, our Supreme Court could  
18 step over the din and say, Enough is enough. We need to  
19 serve the public. And they created the APR Rule 28  
20 creating the Limited License Legal Technician.

21           Now, our Board of Governors, huge fans of the  
22 LLLT program. Huge. I would say almost evangelists about  
23 it. One of our board members put two of his paralegals  
24 through the program.

25           So I think there are some advantages, right, in

1 the sense that we have, you know, this Court who can step  
2 over all of the protectionists' language and, you know,  
3 environment and make these decisions.

4           So the last thing I would say about separation of  
5 powers and a system based on the rule of law and why it is  
6 so important that we are a self-regulated profession,  
7 which again is why we are so -- I'd look at California and  
8 I just see such issues, because of your legislature being  
9 so involved.

10           If you go back hundreds of years to the  
11 development of our profession, lawyers were given two  
12 things: One was self-regulation and one was a  
13 lawyer-client privilege that was in violate. And you  
14 remember that from law school, and you learned about the  
15 four privileges in the United States. Ours is the one  
16 that cannot be pierced.

17           And there was a reason lawyers were given those  
18 two things. It was because our role in society was to be  
19 separate from the legislature and separate from the  
20 executive, because our role in a society based on the rule  
21 of law is to guard against the overreaching and the  
22 underreaching of the government vis-a-vis the individual.

23           And the only way you can do that is for the  
24 courts and, therefore, the lawyers to be independent of  
25 the legislature and the executive.

1           And so that's why I keep saying over and over  
2 again when we look at the California system and how  
3 involved your legislature is, it just totally goes counter  
4 to what we understand a system based on the rule of law to  
5 be.

6           And if you go to these other countries, it's just  
7 much more clear how separate the Court is and how separate  
8 the lawyers are.

9           So that's my little soap box, I have to tell you.  
10 But we do it with law students now, and we do it with a  
11 lot of our volunteers, because, I think, we've sort of  
12 lost that understanding in the United States of why we  
13 must be self-regulated

14           MR. PASTERNAK: We have time for a couple more  
15 questions. I'm going to try to keep us on the agenda  
16 today.

17           Gwen and Jason.

18           MS. MOORE: Mine is a short one. How would you  
19 like to come and testify for us before the California  
20 State Legislature?

21           MS. LITTLEWOOD: I don't have anything to lose.

22           MR. PASTERNAK: Jason?

23           MR. LEE: I thank you for coming in, for your  
24 very insightful remarks.

25           You sort of highlighted some of the diversity

1 inclusion work that the Bar is doing. I'm sort of  
2 fascinated by this idea that the Board of Governors  
3 interviews a candidate to be put on the Board that comes  
4 from a traditionally underrepresented background.

5 How did that idea come about? First question.

6 And sort of connect it with -- I see on your org  
7 chart some internal and external diversity inclusion work  
8 that you're doing which I'm very much interested in  
9 hearing about.

10 And then the third question is: How does an  
11 integrated Bar facilitate that work?

12 MS. LITTLEWOOD: Okay. So the at-large positions  
13 were created about 15 years ago. And it was an absolute  
14 deliberate effort to diversify the Board of Governors.  
15 End of story. That was the history of it.

16 But I encourage you to go out to our Web site and  
17 look at the picture of our Board of Governors, because it  
18 is extraordinarily diverse well beyond these seats. And  
19 actually, I think, five of our governors are under the age  
20 of 40.

21 So diversity inclusion, when I was talking about  
22 the five guiding principles, and I'll leave that as well,  
23 our one-pager, is -- it is one of the highest priorities;  
24 that, and access to justice for our organization.

25 So as I mentioned, one of our guiding principles

1 is ensuring and promoting diversity of quality and  
2 cultural understanding throughout the legal community.  
3 Here's how we intersect with it as the mandatory Bar.

4           So as I mentioned earlier, one of the advantages  
5 of the mandatory Bar is you have immediate access to all  
6 of the membership. And you can set the tone, right. And  
7 so we have two prongs under our diversity inclusion  
8 efforts. The first is what we call understanding the lay  
9 of the land.

10           And so, again, as the mandatory Bar, we have the  
11 most empirical data about what is happening for the  
12 membership, right. So voluntary Bar doesn't have as much  
13 data. So we actually commissioned a study about three  
14 years ago, spent a lot of money on it, and did very  
15 extensive research on -- what is the lay of the land?  
16 What does our membership look like? Because we just had  
17 voluntary rates reporting.

18           And then what we were looking at was -- what we  
19 were trying to figure out is: Why are people leaving the  
20 profession? It doesn't make sense to have a pipeline if  
21 it's dumping into a sieve.

22           And so as a mandatory Bar, we focus on  
23 understanding what the lay of the land is, why people are  
24 leaving, more importantly, why did you stay? What worked?

25           And then our second prong then is retention. Our

1 whole focus in our diversity inclusion efforts on that  
2 prong is: How do we help retain these folks? Because  
3 once they get here, if they're not staying, it's not  
4 helpful.

5           Again, those were difficult conversations,  
6 because everybody wants to do pipeline. And we said,  
7 Pipeline is great. And we're going to support other  
8 people's pipeline efforts. But as a mandatory Bar, we've  
9 got to be focusing on retention once they get here.

10           So we have two -- right. We have an externally  
11 focused diversity person, and then we have an internally  
12 focused diversity person. The internal focus is on staff  
13 and the 900 volunteers, and raising understanding and  
14 awareness about why diversity inclusion is so important to  
15 our profession.

16           The externally facing diversity manager is  
17 working with the Minority Bar Associations and sort of the  
18 external entities. And the two of them work very closely  
19 together. But we do a lot of training with our Board on  
20 diversity inclusion. It's -- the internal person holds,  
21 she calls them, crucial conversations with our staff once  
22 a month. And she picks a different topic.

23           I can't overstate how important diversity  
24 inclusion is to our organization, and then setting that  
25 tone for the profession as a whole.

1 I'll leave this, too. This is, as I mentioned,  
2 our mission statement, our guiding principles, and then  
3 the mission focus areas. And then we don't do strategic  
4 plans, we do strategic goals. And so you'll see what our  
5 strategic goals are. So if that's of interest, I can  
6 leave that.

7 MR. PASTERNAK: Okay. Thank you, Paula.

8 Joanna, did you have a question? We have time  
9 for one last one.

10 MS. MENDOZA: Sure. I was going to ask you what  
11 it is that you think makes attorneys different that  
12 they're not going to do everything to protect themselves  
13 if they're self-regulating as opposed to other professions  
14 that are allowed to be regulated by public members? I see  
15 attorneys looking out for their self-interest. What makes  
16 you think, you know, attorneys are not going to do that?

17 MS. LITTLEWOOD: The protectionists, you mean?  
18 We've been living that on the national --

19 MS. MENDOZA: You certainly saw that with the  
20 LLLTs in your state, and the attorneys certainly acted  
21 that way.

22 MS. LITTLEWOOD: Yeah. And I'm on the  
23 commission -- the ABA Commission on the future legal  
24 services. And let me tell you, we've been living the  
25 protectionism much more so, I would say -- this is a gross

1 generalization -- I think on the East Coast, just some  
2 stunning things that people say. We get these letters  
3 from Bar Associations telling us, "There's no access to  
4 justice problems." Do I have to read the rest of this  
5 letter? You know, it's like a nonstarter.

6 I guess I would say a couple of things. The  
7 protectionists comes from probably two places. One is  
8 just financial, right, profession of your turf. I would  
9 say the second comes from, and I'm a lawyer, arrogance. I  
10 think one of the things that we hear often -- so we've  
11 been traveling all over the country the last three years  
12 talking -- you know, states and other organizations  
13 inviting us in to talk about the LLLT. And one of the  
14 things we often hear, you know, is they're not smart  
15 enough. You know, you can't train a nonlawyer to do these  
16 things. And so I think that's where part of it comes  
17 from.

18 I would say that once our Supreme Court spoke,  
19 the whole tenor in Washington State is totally different.  
20 Now, have we made all 37,000 happy and are all they going  
21 to embrace the LLLTs? No. But it is a culture of  
22 innovation. It is so fun. We have people approaching us  
23 now saying, "Have you thought about the LLLT in this  
24 environment? What about this idea?"

25 So I guess I would say Washington is a living

1 example of, you can start to change the culture. I can  
2 stand up in front of any room now and say that, "The State  
3 Bar Association is a regulatory agency whose first  
4 obligation is to the public," and the Board of Governors  
5 who would stand behind me and say, "That's absolutely  
6 right."

7           So you can change it. But it takes leadership, I  
8 think, and it takes bold moves. It was a bold move by our  
9 Court to do the LLLTs. But it's really changed the  
10 environment. I can't tell you how much fun we're having.  
11 And then trying to figure out the next legal professional,  
12 you know. I mean, it's fun.

13           MR. MANGERS: That's not actually responsive to  
14 the question.

15           MR. PASTERNAK: Hold on. Hold on, here.

16           MS. LITTLEWOOD: Okay.

17           MR. PASTERNAK: Joanna, did you want to  
18 follow-up?

19           MS. LITTLEWOOD: Yeah. Help me understand the  
20 question.

21           MS. MENDOZA: Well, my question was more: Why  
22 are attorneys different? Attorneys are no different than  
23 other professions in my opinion, so why can't attorneys be  
24 regulated by the public members as opposed to attorneys?

25           MS. LITTLEWOOD: Oh, I think they can.

1 MS. MENDOZA: Okay.

2 MS. LITTLEWOOD: Well, I mean, I think you need a  
3 mix. I would say -- go ahead.

4 MS. MENDOZA: Well, in that situation it seems to  
5 me if it had been public members perhaps at the table  
6 instead of attorneys, the LLLT issue perhaps wouldn't have  
7 been met with such resistance --

8 MS. LITTLEWOOD: Yeah, sure, possibly.

9 MS. MENDOZA: -- and such arrogance, and perhaps  
10 the Supreme Court wouldn't have had to have stepped in and  
11 said wait a minute.

12 MS. LITTLEWOOD: Right. And our hope is that --  
13 in fact, I have to tell you this Bar four or five years  
14 ago when our Court passed the rule and your Board of  
15 Governors formed a Task Force, and I called our president  
16 at the time who had been chair of the Board, the Supreme  
17 Court that had recommended the LLLT rule, and I said, "Oh  
18 my gosh, California's Board of Governors has created a  
19 Task Force." And there was a silence on the other side of  
20 the phone. And then he said, "Imagine a Board of  
21 Governors doing that."

22 So our hope is we go into all of these other  
23 states, is that -- you know, it's going to go faster and  
24 there won't be as much resistance because they can see  
25 sort of our history.

1           But to your specific question, do I think the  
2 regulation can be done completely by -- and I will use --  
3 nonlicensed professionals? I don't.

4           And I'll tell you that, because when the  
5 Executive Director was being hired when I was hired, there  
6 was a discussion about whether the Executive Director  
7 needed to be a lawyer or not. My predecessor was not. I  
8 will tell you that I would say that the CEO of the agency  
9 needs to be a lawyer, because when my Chief Disciplinary  
10 Counsel, who I hire and fire, and my Chief Regulatory  
11 Counsel, who I hire and fire, and my General Counsel, who  
12 I hire and fire, come to talk to me about issues, because  
13 I'm a lawyer I understand the rules of professional  
14 conduct, I understand the admission rules. So there is an  
15 expertise that is needed.

16           Can it be a blend? Absolutely. A blend of  
17 public with licensed professionals, couldn't agree more.  
18 Yeah.

19           MR. PASTERNAK: Paula, thank you very much.

20           Unfortunately, we're out of time. But I do want  
21 to give you an opportunity as a result of the discussion,  
22 is there anything more you want to say that you haven't  
23 covered?

24           MS. LITTLEWOOD: No, I did it with my soap box  
25 about separation of powers, so...

1           MR. PASTERNAK: I thought you were terrific. You  
2 have given us more food for thought starting this project.

3           MS. LITTLEWOOD: Great. So let us know how we  
4 can help.

5           MS. KRINSKY: Dave, I have two --

6           MR. PASTERNAK: Unfortunately, Miriam, we have to  
7 move on. With the scheduling, we're not going to make it.

8           MS. LITTLEWOOD: Yeah, just e-mail me.

9           MS. KRINSKY: I'll e-mail you.

10          MS. LITTLEWOOD: Yeah.

11          MR. PASTERNAK: Thank you very much.

12          MS. PARKER: And as Paula moves off the stage,  
13 I'll say to those of you who have questions, she's been a  
14 remarkable support to me. And every time I call, she's  
15 always willing to answer questions. So you can certainly  
16 reach out to her and learn more.

17          MR. PASTERNAK: I have no doubt that we easily  
18 could have spent the rest of the day with you, Paula, no  
19 question about it.

20          Okay. We're going to move on to our next guest,  
21 which is going to take us in a different direction. It's  
22 Yvonne Choong. And I hope I'm pronouncing your name  
23 correctly.

24          MR. GOMEZ: She has to call in.

25          MR. PASTERNAK: Oh, okay. In the meantime, we've

1 heard now from a mandatory State Bar. We're now going to  
2 hear from a voluntary medical association.

3 Yvonne is the Vice President of the Center for  
4 Health Policy at the California Medical Association where  
5 she heads the Center for Health Policy that provides  
6 research and analysis on a broad range of health policy  
7 issues that affects physicians and patient care. The  
8 center helps to improve physician impact on the  
9 development of health policy by identifying opportunities  
10 and advocating for the appointment of physician members to  
11 external policy, advisory and oversight committees and  
12 boards.

13 Yvonne, do we have you on the line?

14 MS. CHOONG: Yes, I'm here.

15 MR. PASTERNAK: Oh, good. And we have your  
16 photo, too.

17 And incidentally, if I could just hold off for  
18 one minute. I just remembered, I neglected to have Terry  
19 take roll earlier.

20 So Terry, if you could take roll. I saw that  
21 everyone was here. You pointed that out.

22 MS. GREENMAN: Krinsky?

23 MS. KRINSKY: Yes.

24 MS. GREENMAN: Lee?

25 MR. LEE: Yes.

1 MS. GREENMAN: Mangers?

2 MR. MANGERS: Yes.

3 MS. GREENMAN: Mendoza?

4 MS. MENDOZA: Yes.

5 MS. GREENMAN: Meyers?

6 MS. MEYERS: Here.

7 MS. GREENMAN: Moore?

8 MS. MOORE: Yes.

9 MS. GREENMAN: Pasternak?

10 MR. PASTERNAK: Yes.

11 MR. PASTERNAK: And also I neglected to mention,  
12 too, that we're going to have an opportunity for public  
13 comment after lunch. We are asking, though, that this  
14 session today is really focusing on other Bar Associations  
15 and other agencies. We are going to have full public  
16 comment on any issues that we're addressing at our two  
17 public hearings in April. So we are trying to limit the  
18 focus of this meeting specifically to looking at other  
19 examples.

20 Yvonne, welcome. And the floor is yours to tell  
21 us about the California Medical Association. And I don't  
22 think we have sound.

23 MS. CHOONG: Hello.

24 MR. PASTERNAK: There we go.

25 MS. CHOONG: Can you hear me?

1 MR. PASTERNAK: Yes.

2 MS. CHOONG: Okay. Great.

3 PRESENTATION BY MS. YVONNE CHOONG:

4 MS. CHOONG: Well, thank you. Good morning. My  
5 name is Yvonne Choong. I am the Vice President for Health  
6 Policy with the California Medical Association. And I've  
7 been asked to provide some information about how our  
8 association functions, particularly in relation to the  
9 Medical Board of California, and the differences between  
10 what our two organizations do, and some background about  
11 how we govern ourselves, et cetera.

12 So I've prepared a slide presentation here, and  
13 feel free to ask questions. There's a lot of information.  
14 And if there's something that you want me to dig into a  
15 little bit more, I'm happy to do so.

16 I will go ahead. Can you see my slides?

17 MS. PARKER: Yes, we can.

18 MS. CHOONG: Okay, great. So I thought I'd start  
19 with this, what I'm planning to cover in my presentation  
20 today.

21 So this provides some background on California's  
22 physician work force. There are basically two types of  
23 physicians in California. For the purposes of recognition  
24 by the state, they're the same. M.D.'s, medical doctors,  
25 and doctors of osteopathy. And the state issues

1 physicians and surgeons licenses to both of these types of  
2 physicians.

3           There are differences in the type of medicals  
4 schools that they go to; but for all intents and purposes,  
5 they are virtually the same.

6           So this slide provides some information regarding  
7 the size of the physician population. In California, the  
8 total number of licensed physicians is just under 140,000.  
9 Not all of those physicians are in active practice.  
10 M.D.'s, we know there's about 85-, 86,000 physicians who  
11 are in active practice. So this provides a breakdown  
12 between the allopathic physicians, the M.D.s, and the  
13 osteopathic physicians, the D.O.s.

14           So the license that is granted by the State of  
15 California is a plenary license, and this is in the  
16 section of the Medical Practice Act which states --  
17 basically what defines this physician in California. And  
18 what we mean by a "plenary license" is that physicians are  
19 not licensed according to specialty. All physicians get  
20 the same kind of license. And what determines the actual  
21 procedures they can perform and the type of practice they  
22 can offer is based on their qualification and training.

23           So theoretically, a physician, once you have a  
24 medical license, you can -- let's start with a  
25 pediatrician. I can go and get an additional training and

1 be a surgeon. But that would not be -- my license would  
2 not change. That would be determined by my training --  
3 whatever additional education and training that I  
4 received. And both M.D.'s and D.O.s are subject to the  
5 Medical Practice Act.

6           According to the California's physician work  
7 force, we have one of the oldest physician populations.  
8 We range second in the number of physicians who are over  
9 the age of 60. We have a fairly sizeable number of  
10 members who are international medical graduates; meaning  
11 that they completed medical school outside of the United  
12 States and Canada. About a third of our physicians are  
13 female.

14           The physician work force in California covers  
15 over 200-plus specialties and subspecialties. The largest  
16 specialties are internal medicine, family medicine,  
17 primary care specialties, pediatrics, OB-GYN and  
18 anesthesiology.

19           With regard to what it takes to become a  
20 physician in California, physicians go to medical school  
21 for four years, and then pursuant to state law they're  
22 technically only required to have one year of residence  
23 training, but the vast majority of physicians have three  
24 to seven years of residency training and maybe more,  
25 depending on their subspecialty.

1           Once they complete that educational portion, they  
2 have to also complete a national licensing exam, which is  
3 the USMLE. And those exams are taken in three parts at  
4 different points during their medical education: Once  
5 after completion of medical school, one at the beginning  
6 of their residency and then one at the end. They then  
7 must apply for a medical license. And once they receive  
8 their license, in order to keep their license active, they  
9 have to participate in 50 hours of continuing medical  
10 education every two years. State law does have some  
11 specificity depending on their specialty regarding certain  
12 types of CME, but for the most part it's fairly broad, and  
13 physicians have the discretion to determine what type of  
14 continuing medical education they will take.

15           In order to practice, physicians are not required  
16 to carry malpractice insurance, and they're also not  
17 required to be board certified, although many are. The  
18 medical board also does not track board certification by  
19 physicians. Board certification is tracked by the  
20 individual specialty board at the national level, which  
21 falls under the umbrella of the American Board of Medical  
22 Specialties.

23           And finally, much of what determines what a  
24 physician can do relates to their privileges. A physician  
25 who wishes to practice in a hospital needs to apply to be

1 on the medical staff through a peer process. Their  
2 credentials are reviewed to determine which procedures  
3 they can safely perform in the hospital.

4           So CMA has a long history. We were founded back  
5 in 1856 in the gold rush days as a result of several  
6 public health outbreaks, including cholera. So we were  
7 founded in 1856. And the medical society was basically  
8 responsible for vetting and ensuring the quality of  
9 physicians between 1856 and 1876 when the first Medical  
10 Practice Act was passed and the Board of Medical Examiners  
11 was created by the state.

12           And at that time, what the law stated was that  
13 all the board members would be appointed by the medical  
14 society. So for all intents and purposes, the Board of  
15 Medical Examiners and the Medical Society at that time  
16 were the same entities. The Medical Society was  
17 controlling the Board.

18           Since that time -- so to back up a little bit, so  
19 while the Board of Medical Examiners was technically  
20 created as a separate entity, there was a lot of influence  
21 by the Medical Society. Over the last 150 years or so,  
22 however, the Board has been restructured many times into  
23 what is currently the Medical Board of California. And  
24 much of these restructurings had to do with concerns by  
25 other health professions, various factions of physicians

1 who were concerned about the influence that the Medical  
2 Society had on the state functions that were being  
3 performed by the Board of Medical Examiners.

4           You see here in 1901 a new Medical Practice Act  
5 was passed which established a nine member board, again,  
6 with members appointed by the State Medical Society. But  
7 by then, other medical societies had also been formed in  
8 the state. And it was unclear which medical society  
9 really spoke for physicians.

10           So all state law was basically crafted to allow  
11 all of these medical societies to have input on who would  
12 be appointed to the Board of Medical Examiners. At  
13 various times there was also litigation regarding the  
14 authority of a board appointed by a medical society. So  
15 you'll see over time the size of the board also increases,  
16 1907.

17           And then probably the most significant change in  
18 recent history was in 1975, AB1xx, which was MICRA. So in  
19 addition to the malpractice case of MICRA, which is what  
20 it's really known for, it also restructured the Medical  
21 Board and created three divisions: The Division of  
22 Medical Quality, Licensing and Allied Health Professions.  
23 And those three divisions were basically functioning as  
24 quasi-autonomist smaller medical boards, each with a  
25 defined responsibility for enforcement, and licensing and

1 scope of practice.

2           So in 1990 this became what we currently know as  
3 the Medical Board of California. And the current medical  
4 board, the size has varied over time. The number of  
5 public members has also changed. So currently we are at  
6 eight physician members and seven public members. At one  
7 time the entire public board was actually much larger.  
8 And then there was an overhaul, and the number of  
9 physician members was decreased and the number of public  
10 members remained the same.

11           So the California Medical Association, we are a  
12 professional organization. We represent the physicians in  
13 California. We have approximately 41,000 members. That  
14 also includes medical students and residents. And you can  
15 see, we do not represent all practicing physicians in  
16 California, although we believe that we do represent a  
17 good cross-section in terms of most practices and  
18 specialties.

19           And our primary functions include legislative,  
20 legal, regulatory, economic and social advocacy on issues  
21 related to health care and medical practice.

22           This slide provides a snapshot of our governance  
23 structure. And as you can see, it's fairly complex. We  
24 like to say we're very democratic, with a small "d." Our  
25 base of power has always been our house of delegates,

1 which is a group of 400-plus physicians who are designated  
2 by various constituent groups within the physician  
3 population.

4           This could be constituencies that are based --  
5 that are geographically-based, based on the type of  
6 practice, for example, small solo physicians versus very  
7 larger medical groups such as Kaiser and Sutter, and all  
8 of the practice sizes in between.

9           And every year we convene our House of Delegates  
10 in October and we have an annual meeting. It's almost  
11 like a mini legislature. And resolutions are proposed,  
12 which basically come from our membership, and our ideas  
13 for what our membership believes our advocacy should be  
14 going forward. And these resolutions are put forward.  
15 They're subject to debate and discussion.

16           And at the end of this two-day process, we come  
17 up with a set of policy guidelines that are used by our  
18 advocacy staff as we move forward and take positions on  
19 bills and litigation, and they sort of become our guiding  
20 principles.

21           And so we've been compiling what we call our  
22 policy compendium for many years, since the organization  
23 started. And we just keep adding to this. And we have  
24 policy on everything, ranging from public health issues,  
25 to managed care, medical practice, how the professional

1 should be governed. So there are a lot of issues that are  
2 covered here. So that's sort of the base.

3           And then the House of Delegates meet once a year.  
4 On a quarterly basis, we have a Board of Trustees, again,  
5 which are appointed from various constituent groups within  
6 CMA. And we actually underwent an overhaul a couple of  
7 years ago. So this is the first year implementing our new  
8 Board of Trustees, which has been shrunk down to about 33  
9 members.

10           Prior to that, we had had sort of a creep where  
11 the size of the Board of Trustees kept getting bigger and  
12 bigger. At one point we had close to 50 trustees, which  
13 was quickly becoming an unworkably large group to manage.

14           So in the interim, the Board of Trustees is  
15 empowered to make policy decisions on behalf of the House  
16 of Delegates. And you'll see here that we have a wide  
17 variety of standing houses and subcommittees that have  
18 been formed to develop policy on behalf of the  
19 association.

20           And these cover -- we have a council on ethical,  
21 legal and judicial affairs, health professions and quality  
22 of care, legislation, science and public health, medical  
23 services, which covers a lot of the nitty-gritty medical  
24 practice issues related to payment, health information  
25 technology, et cetera.

1           So all of these councils and subcommittees are  
2 comprised of physician members. And we vet our members  
3 based on their interests, their expertise, making sure  
4 that we have a good representation of physicians who can  
5 basically serve as a sounding board when issues come up  
6 that we can go to get them and get the input from  
7 practicing physicians on how CMA should be proceeding on  
8 these issues.

9           So CMA governance board members, like I said, we  
10 have about 41,000 members. We have a staff of about 70.  
11 We also have 36 county medical societies, which are  
12 individually and independently formed, but sort of form a  
13 confederation underneath the broader umbrella of CMA.

14           So when a physician wants to join CMA, they  
15 actually join at the county level. And then CMA  
16 membership is part of that.

17           You can join your county -- when you join your  
18 county medical society, you have to join CMA, so it's a  
19 package deal.

20           Our Executive Committee has seven members  
21 comprised of the incoming, present and past president. We  
22 have a speaker, vice speaker for our House of Delegates,  
23 and a chair and a vice chair of our Board of Trustees.

24           In terms of CMA's governance, there's a couple of  
25 pathways to leadership roles. Many come up through their

1 county medical societies. Once physicians get into the  
2 pathway with our Executive Committee, the path to becoming  
3 president can range from -- in some cases as short as two  
4 years. We do have a mechanism to have sort of a shortcut  
5 to becoming president. But in most cases will probably  
6 range from seven to ten years serving in various positions  
7 at the leadership level before a physician becomes  
8 president of the association.

9           And we've also created structures that preserve  
10 our institutional knowledge and policy; for example, the  
11 CMA policy compendium. Again, we refer to this policy  
12 compendium regularly. And we do try to update it. We  
13 have a process for reviewing policy that was passed by  
14 previous House of Delegates. And we use this, you know,  
15 to continue to refer back to it so that we don't -- we're  
16 not constantly changing our policy based on the individual  
17 makeup of any of our governing institutions.

18           The CMA in terms of staffing, we have various  
19 centers. This kind of gives you a sense of the areas that  
20 we cover. Government Relations, those are our lobbies.

21           Legal Affairs, they are responsible for -- in  
22 addition to determining whether or not CMA gets involved  
23 in legal cases, they are also responsible for updating  
24 what we call our California Physicians Legal Handbook,  
25 which is an eight-volume set of white papers on a wide

1 range of medical practice issues that we update on an  
2 annual basis, and our attorneys are the ones that go  
3 through, review it a lot and make sure that all that  
4 information is up-to-date.

5 Health policy, that's my center. We work with  
6 our members to develop a lot of policy positions on a wide  
7 range of health policy issues. We also do a lot of  
8 regulatory advocacy.

9 We have a group that is called Economic Services,  
10 and they do more of the individual one-on-one assistance  
11 to our members in terms of working with health plans and  
12 other payers to make sure that they are appropriately  
13 reimbursed. They do a lot of individual case management  
14 and troubleshooting.

15 And then on the association side, we have Public  
16 Affairs, which handles our media contacts, membership and  
17 communications, directly with our members and county  
18 medical societies. And then we have staff that are  
19 focused on administration and governance.

20 As you saw, we have a fairly complicated  
21 governance structure. So we have staff dedicated to  
22 making sure all of that goes smoothly.

23 With regard to membership dues. All members join  
24 their County Medical Society and CMA. CMA's share of the  
25 dues right now are \$590 a year. But this amount may be

1 reduced with various discounts that we may put into place.

2           The County Medical Society's share of the dues  
3 will vary depending on the county. In some very small  
4 counties, you know, where they only have 30 physicians,  
5 their dues are \$50. Larger counties, such as Los Angeles,  
6 are as high as \$560. And, again, they also offer various  
7 discounts and group rates.

8           So it's hard -- I would say on average your  
9 average CMA physician is probably paying in the  
10 neighborhood of a thousand dollars a year with membership  
11 with CMA.

12           Physicians also join other membership  
13 organizations. Many are members of the American Medical  
14 Association, which again is a separate organization. They  
15 have their own dues. Most physicians are also members of  
16 their specialty societies as well. And this is an  
17 interesting struggle that we have in terms of recruiting  
18 physicians for membership.

19           Anecdotally, many physicians feel that their  
20 first priority with regard to joining professional  
21 associations is their specialty society. That's where a  
22 lot of their board certification information comes from,  
23 that's where they get a lot of specialty specific  
24 continuing medical education.

25           So specialty societies in large part don't have

1 much of an issue in terms of recruiting members, because  
2 it's almost automatic that a physician will join their  
3 specialty society. But what that does do is put pressure  
4 on other associations, such as CMA and the AMA in terms of  
5 being able to fight for a physician's professional dues  
6 dollars. So that's sort of a brief overview of CMA.

7           With regard to state regulation, their medical  
8 licenses come with oversight and regulation by either the  
9 Medical Board of California or the Osteopathic Medical  
10 Board of California. So there are two separate regulatory  
11 bodies, depending on whether or not a physician is an M.D.  
12 or a D.O.

13           The Medical Board of California, the 15-member  
14 board with eight physicians and seven public members, and  
15 the Osteopathic Medical Board, which has much fewer  
16 licensees, has a nine-member board with five physicians  
17 and four public members.

18           So the functions of the regulatory licensing  
19 bodies include licensure, reviewing applicants to make  
20 sure that applicants meet the mandated qualifications;  
21 enforcement, this is discipline, so taking in complaints,  
22 doing investigations, working with the Department of  
23 Justice to prosecute physicians that are found to be  
24 practicing outside the standard of care; influencing  
25 regulation and legislation that impact the board; general

1 board administration. And then they do some outreach and  
2 education.

3           So the Medical Board of California, they  
4 currently -- we have currently have one of the highest  
5 licensing fees in the country. It's about \$820 every two  
6 years. That's the renewal fee. And then when a physician  
7 is applying for a license, they pay a new license  
8 application fee of \$540, and then an additional licensing  
9 fee of \$808.

10           And with regard to their budget, it's completely  
11 funded by physician renewal fees. And so for 2016, '17, I  
12 wanted to give you the size of their budget, it's almost  
13 \$80 million. In terms of what those dollars are being  
14 spent on, a majority of it is used for enforcement; and  
15 that includes investigation and contracts with the  
16 Department of Justice for legal services.

17           And then also their licensing functions, which  
18 include staff to review and process medical license  
19 applications.

20           And the Osteopathic Medical Board of California  
21 actually has a much lower application fee, partly because  
22 I think they just have fewer licensees.

23           So thinking about what's the difference between  
24 CMA and the Medical Board, I think we have very different  
25 missions. CMA, we're much more focused on policy

1 development, legislative and regulatory. Legal advocacy.  
2 We get more involved with physicians on day-to-day  
3 practice management issues. And in terms of offering  
4 technical assistance and individual advocacy services, we  
5 get more involved on a broader range of health policy  
6 issues, including public health issues.

7           Whereas the Medical Board really views -- I don't  
8 want to speak for the Medical Board, but in large part  
9 they view their core functions as licensing and  
10 enforcement. And that's what they focus on. They will  
11 deviate a little bit in terms of educating themselves  
12 about, you know, what's going on, for example, in health  
13 reform and the ACA. But the vast majority of their  
14 resources are focused on licensing and enforcement.

15           And in terms of our relationship with the Medical  
16 Board of California, it's varied. The Medical Board  
17 actually has a history of -- the Medical Board posted on  
18 their Web site that was written back in 1995, and when you  
19 read it, what you see is there's been this tension since  
20 the founding of the Board of Medical Examiners and the  
21 Medical Society about how much influence is appropriate  
22 between the Medical Society and the Medical Board.

23           I would say right now CMA has a really good  
24 relationship with the Medical Board. It's taken some time  
25 to develop, but at different times in history, so over the

1 last 30 years, depending on the issues, there's been some  
2 issues that have come up that have been highly contentious  
3 and have -- but at those points in time, CMA did not have  
4 a good relationship with the Medical Board. Some of that  
5 was based on the individual personalities of physicians  
6 involved in CMA's leadership, with the Medical Board's  
7 leadership, so you get a lot of personality conflicts.

8           So looking at sort of past issues of conflict,  
9 you know, we are perennially pushing the Medical Board to  
10 be more efficient in terms of licensing. We hear a lot of  
11 complaints from our members about how slow the licensing  
12 process is.

13           The Medical Board's disciplinary process with  
14 regard to ensuring that physicians who do end up facing an  
15 accusation that they are able to, you know, contest  
16 complaints against them; that they have due process.

17           The elimination of the Medical Board's Diversion  
18 Program was a highly contentious issue several years ago.  
19 And we are always concerned about the level of increased  
20 administrative burdens on physicians largely as a result  
21 of changes in state law.

22           Areas of cooperation. Recently that we've been  
23 able to work with the Medical Board on enforcement of the  
24 corporate -- the bar on the corporate practice of  
25 medicine. Working within the civil guidelines for

1 prescribing opioids. More efficient prosecution of  
2 utilization review that is conducted poorly and abusive  
3 and telehealth. So slowly we are identifying issues where  
4 we can work with the Medical Board.

5           Thinking about, you know, what are the benefits  
6 or challenges that we have faced in terms of having --  
7 being two separation entities. I would say that some of  
8 the benefits of separation is that we really are able  
9 to -- we have comparative advantages in different spheres  
10 of influence.

11           Because of our separation from the Medical Board,  
12 we are actually able to focus more on a broader range of  
13 health policy issues that the Medical Board rarely is able  
14 to address, partly because it's not part of their core  
15 mission, and because in their role as a state entity, they  
16 are unable to -- they believe they're unable to take  
17 positions on several types of health policy issues.

18           And in some ways, we have a better system set up  
19 for soliciting physician input into the development of  
20 health policy. And the Medical Board is not set up to do  
21 that.

22           Some of the challenges that we have faced, you  
23 know, our members often have expressed frustration that we  
24 can't make the Medical Board do what we want. We can't  
25 force them to implement a different type of medical

1 licensing process, for example.

2           We are -- from CMA's perspective, we end up  
3 having to focus a lot on recruiting new members and  
4 retaining our existing members, and the organizational  
5 viability. Whereas the Medical Board has -- they have a  
6 regular revenue stream from licensing fees. So those are  
7 some of the challenges that we have faced in thinking  
8 about whether or not we would ever want to be unified with  
9 them. We always joke that that would certainly be nice  
10 for us to have, you know, an automatic \$78 million that  
11 comes in every year that we don't have to worry about.

12           So that is a very quick snapshot. I hope I  
13 didn't go too fast. But I wanted to leave time for your  
14 questions about how we in the Medical Board function.

15           MR. PASTERNAK: Yvonne, thank you very much.  
16 This is David Pasternak. There are two questions that I'd  
17 like to ask you before I open it up for other questions.

18           One is: You said that you now have about 41,000  
19 members, which includes medical students and residents.  
20 How many of the 41,000 members are licensed physicians?

21           MS. CHOONG: I don't have those numbers. I want  
22 to say it's probably in the low 30s.

23           MR. PASTERNAK: And are there free memberships to  
24 med students or residents or do they pay reduced fees?

25           MS. CHOONG: Right. Medical students, I can't

1 remember. I think if we do charge, it's something very  
2 modest, it might be \$50 a year or something like that.  
3 For all intents and purposes, it's free.

4           And then we offer 50% -- in terms of membership  
5 discounts, probably the biggest discounts that we provide  
6 are for new members. I believe we offer them 50% off.  
7 And then retired physicians who are no longer in practice,  
8 we also will have a significant discount for them as well.

9           And then we also do bundled membership practices  
10 with larger groups; for example, the Permanente Medical  
11 Group, because they represent such a large proportion of  
12 California physicians, they may face a different rate than  
13 some of the other groups.

14           MR. PASTERNAK: And one other question I have:  
15 Can you tell us what your legislative priorities are this  
16 year, your top two or three or four in terms of what  
17 you're trying to accomplish in the legislature this year?

18           MS. CHOONG: A couple of things we have going --  
19 actually, we're having our meeting today to start looking  
20 at that, because we've pulled down all the health policy  
21 bills, so we're trying to organize ourselves, so we  
22 actually have a meeting going on today to decide that.

23           For this year, I think in our sponsored bill  
24 package we do have a bill to reestablish a physician  
25 health program, not a diversion program, but to establish,

1 you know, a place within -- that would be a program that  
2 would be administered by the Medical Board via a  
3 third-party entity to offer services for physicians who  
4 are facing substance abuse issues.

5           So this has been an issue that has been a  
6 long-standing controversial issue for CMA. So we're going  
7 to be running a bill. What other bills? You know, I have  
8 not seen -- I actually don't do our legislative lobbying,  
9 so I don't have the sponsored bills in front of us.

10           MR. PASTERNAK: Thank you.

11           And other comments? Denny?

12           MS. PARKER: Could I just suggest be careful with  
13 the mics because everything gets picked up, and it makes  
14 it difficult for those who are on the line to hear if  
15 you're whispering or whatever, so you get, I would say,  
16 collateral conversation.

17           MR. MANGERS: Miss Choong, this is Denny Mangers.  
18 I'm a public member of the Board of Trustees here. Thanks  
19 for joining us.

20           Could you specifically relate to us the  
21 circumstances under which your regulatory and trade  
22 functions were separated? I heard a rumor that you  
23 actually asked the legislature to partner with you in  
24 making that separation. And then speak just briefly, if  
25 you will, as to what you see as the benefits to both

1 elements of responsibility for having done so.

2           In other words, did they make you do it? Did you  
3 do it voluntarily? Did you want them to do it? Under  
4 what circumstances did it happen? And how is that working  
5 out from your view?

6           MS. CHOONG: So I was not with CMA at that time,  
7 so I'm just sort of just speaking what I know anecdotally.

8           My understanding is, we've always -- as I said  
9 earlier, since the turn of the century, we have been two  
10 separate entities. So the Medical Society was never  
11 legally conducting -- was never legally serving at the  
12 Board of Medical Examiners at any point. We've always  
13 been separate. That being said, for many years the  
14 Medical Society did have a lot of influence, particularly  
15 with regard to being able to appoint members to the Board  
16 of Medical Examiners. And I think that even after, you  
17 know, we moved public members onto the Board of Medical  
18 Examiners, obviously the Medical Society still continued  
19 to have at least unofficial influence. But my  
20 understanding that was not -- did not have an official  
21 role with the Board.

22           With MICRA, I think part of -- my understanding  
23 is part of the deal as we were negotiating that was that  
24 we would shed -- you know, they created these divisions of  
25 medical quality and licensing, and I think that was part

1 of a move to create a more formal separation between the  
2 Medical Society and the Medical Board. And so I think  
3 that -- I can't say as to whether or not we were made to  
4 do it, I think it was part of the larger negotiation. But  
5 the idea was that we would agree to be more self-policing  
6 and give -- but also give up some of this control to a  
7 state regulatory body.

8 MR. PASTERNAK: Other questions or comments? I  
9 see no -- I'm sorry, Yvonne, you didn't hear me.  
10 Apparently there are no comments or questions. We thank  
11 you. We find what you had to offer very helpful, showing  
12 us another example of a different type of organization.

13 MS. CHOONG: You're very welcome. Thank you for  
14 having me.

15 MS. PARKER: Yes, thank you very much.

16 MR. PASTERNAK: We're going to move briefly to  
17 Ellen Miller-Sharp.

18 And I hope our court reporter is doing okay.  
19 We'll take a break at noon. Are you all right?

20 THE REPORTER: Mm-hm.

21 MR. PASTERNAK: Ellen is the Executive Director  
22 of the San Diego Bar Association. But she has limited  
23 availability. She's only available until noon. So we'll  
24 hear from her until noon, and then she will rejoin us.  
25 I'm told she's available at 1:30. But instead of not

1 using the time, because we do have limited time and we  
2 have lots of speakers -- and I suspect we're going to  
3 easily fill that time.

4           Ellen is the Executive Director of the San Diego  
5 County Bar Association, which is the second largest  
6 voluntary regional Bar in California. She oversees an  
7 incredible array of programs there. Before she joined the  
8 San Diego Bar, she was the Section Director of the  
9 American Bar Association Section of Dispute Resolution in  
10 Washington, and she also has served as Director of San  
11 Diego Superior Court Civil Mediation Program, and as a  
12 Program Director for the State Bar, our State Bar,  
13 supporting Middle Income Dispute Resolution Program.  
14 She's done a lot of other things, but I think that's a  
15 sufficient introduction.

16           Ellen, are you with us?

17           MS. MILLER-SHARP: I am, David.

18           MR. PASTERNAK: Great. And as long as you can  
19 stay with us, tell us when you need to break, and then  
20 we'll bring you back when you're available, as I  
21 understand it, 1:30.

22           MS. MILLER-SHARP: Sure. Thanks. I appreciate  
23 the flexibility. And I appreciate being invited to join  
24 all of you today.

25           PRESENTATION BY MS. ELLEN MILLER-SHARP:

1 MS. MILLER-SHARP: I'm actually speaking to you  
2 as a Bar professional and not in my official capacity as  
3 the Executive Director and CEO of the SDCBA; mainly,  
4 because my path is a little bit unique, having worked for  
5 the State Bar and the National Bar, and am now here --  
6 have been at the SDCBA for -- this is my ninth year  
7 working with that voluntary Bar entity. So my perspective  
8 is a little bit unique, having sat in all of those  
9 different positions.

10 I know you have a large task before you looking  
11 at the governance structure for the State Bar, and I'm not  
12 going to weigh in on what that structure should be. But I  
13 was asked to offer a couple of observations that could  
14 potentially assist you as you're thinking about what best  
15 governance structure makes sense.

16 So the first issue is something that everyone has  
17 been paying attention to, at least in California, and  
18 certainly nationally, is how best can we serve and protect  
19 the public through LRIS programs? And there's been  
20 obviously quite a bit of discussion about the ABA Rocket  
21 Lawyer program, and what that was, and how it was piloted  
22 in California.

23 But as I think about how consumers in today's day  
24 and age connect with lawyers, and when I think about the  
25 regulatory framework that the State Bar has regarding its

1 LRIS program, I would encourage you to think "How  
2 effective is that?"

3           You know, the State Bar was asked to entask with  
4 regulating LRIS programs in the 1950's before the Rules of  
5 Professional Conduct even allowed lawyers to advertise.  
6 Clearly the market has shifted and expanded beyond likely  
7 most of our beliefs and thoughts. And as a result, the  
8 LRIS programs really have very limited impact. And if we  
9 looked and had the ability to poll California consumers  
10 how they select lawyers, such a tiny, tiny percentage are  
11 referred to LRIS programs; yet, that is a function that  
12 the State Bar has been tasked with. I don't know whether  
13 you enjoy that function or not.

14           But as we've been talking about LRIS programs and  
15 all of these other creative options, it is an interesting  
16 thought to think what structure should the State Bar have  
17 to best regulate how lawyers and how the public find  
18 lawyers. Or is that even necessary?

19           You know, right now we've got Avvo, we've got  
20 Legal Zoom, we've got Rocket Lawyer. For those of us who  
21 were at the ABA meeting a couple of weeks ago, we saw a  
22 myriad of other legal business commoditized products that  
23 are not LRIS's, and would never be considered LRIS's from  
24 a regulatory standpoint.

25           So we have an environment right now where there's

1 an awful lot of consumers finding legal assistants and  
2 legal help through products that are not regulated by  
3 anybody.

4           So we ask: Why does the State Bar need to  
5 regulate LRIS programs? Is that really the best way to  
6 protect the public?

7           So that's really -- the first observation from  
8 that standpoint is, I can't weigh in on whether a unified  
9 or a bifurcated Bar would best address it, but it's  
10 certainly one of the regulatory responsibilities you're  
11 charged with.

12           And I'm not sure from where I sit and from the  
13 access to justice an administrative justice journey that I  
14 have been on for the past 25 years, I'm not sure if that  
15 is the most effective use of all of our time.

16           The second observation I wanted to share was one  
17 about how best to protect the public by entities leading  
18 the profession. I think we would all agree that the  
19 profession is going through extraordinary change to the  
20 point where it's just exponential, and those of us who  
21 support lawyers and support programming and services to  
22 help lawyers continue to grow and be better are challenged  
23 by the growth of what this future profession looks like.

24           And we live in an environment where the American  
25 Bar Association is really cast, I would say, in our

1 country with leading the profession in its thinking.  
2 Certainly it has a Futures Commission that, in fact, Paula  
3 Littlewood sits on.

4           And I'm not sure if she shared some of those  
5 thoughts with you this morning, but the Futures Commission  
6 is doing some work, but it is so isolated given the  
7 behemoth work of the ABA, the ABA is just not able to take  
8 as much of an active position leading the profession as  
9 those of us who are in the trenches would necessarily  
10 like.

11           The State Bar has the ability to lead the  
12 profession by convening groups, and convening colloquia  
13 and developing white papers on what are the hot topic  
14 issues.

15           And if we look most recently just at the chief  
16 bar example of a couple of years ago where the State Bar  
17 wanted to look at what it could do to help better ensure  
18 that recent law graduates had some experiential  
19 understanding and framework before they went out in the  
20 world.

21           And even if I look at that example, the State  
22 Bar's role was very limited in that it focused on what it  
23 could ask law schools to do as opposed to a more broader  
24 conversation that it may have had, for example, bringing  
25 together a variety of the stakeholders and just mapping

1 out, what would it take to have better trained law  
2 students? What other functions do we and other hats do we  
3 at the State Bar wear that we can participate in creating  
4 some space and certainly some hours in terms of curriculum  
5 for the law schools? What can we do to partner with the  
6 law schools to better produce a more qualified law student  
7 and law student graduate.

8           If I look back at that cathartic example, I would  
9 say that the State Bar did a wonderful job, but didn't  
10 access all of the tools that it had available. It didn't  
11 go and look at how could it change its Bar exam to lessen  
12 the requirements on law schools to trade up sometimes. It  
13 didn't look at all of the other admitted attorneys it had  
14 and the ability to look at mentoring opportunities. So it  
15 looked very narrowly at one aspect of what makes a  
16 qualified law student ready to be admitted and licensed.

17           So those are just a couple of observations that I  
18 wanted to share. I know that your focus is on public  
19 protection. And, you know, again the governance model can  
20 morph in to be what it needs to be based on that.

21           But I can say that someone who worked at the  
22 State Bar of California in the '90s, you know, my  
23 perception, we did an extraordinary amount of work -- and  
24 just so you know, I was there at the State Bar when the  
25 State Bar got shut down, and I was one of the hundreds of

1 people who got the pink slip and had to move on. But the  
2 work that the State Bar did prior to shutdown was really  
3 extraordinary leadership. It would bring together  
4 internal and external stakeholders to discuss access to  
5 justice issues, to discuss court backlog and court reform.  
6 It would bring together the standing committees. It would  
7 bring together the sections. It would bring together  
8 external partners and law-related organizations to really  
9 sit down and think about what was the best next step and  
10 direction that the professions should take.

11           And then it would codify all of that discussion,  
12 and wisdom and creativity in white papers and reports that  
13 served as models to the state. And that such  
14 extraordinary leadership that I can say from a voluntary  
15 Bar standpoint is something that we -- as voluntary Bars,  
16 that we can't do on our own, and we would love entities to  
17 take that leadership and help lawyers go through this very  
18 difficult transition that they need to deal with,  
19 especially in the next 25 to 30 years. The profession  
20 will look very difficult.

21           So that's pretty much what I wanted to share,  
22 what I was asked to share. I'm not sure if you have any  
23 few follow-up questions before I have to run to my next  
24 meeting and rejoin.

25           MR. PASTERNAK: Thank you, Ellen.

1           Let me ask the Task Force members: Does anybody  
2 have any questions? The group has gotten very quiet in  
3 the last few minutes. I think they're starting to get  
4 hungry for lunch.

5           I'd like to ask you a question, Ellen. And I  
6 understand that you're not here wearing your hat as  
7 Executive Director of the San Diego Bar Association. But  
8 do you have any thoughts about what a California State  
9 Voluntary Bar Association would look like? Do you have  
10 any thoughts about whether that's viable? Whether people  
11 would join? Whether it would be able to fulfill the  
12 functions that are non-regulatory that are now being  
13 performed by the State Bar?

14           MS. MILLER-SHARP: A very complicated question to  
15 answer in 45 seconds.

16           MR. PASTERNAK: If you want to save it until  
17 1:30, that's okay, too.

18           MS. MILLER-SHARP: You know, I think that there's  
19 pros and cons to all of it, you know. The State Bar could  
20 be viable in a variety of ways. And it certainly was  
21 viable in the '90s. It's viable today. I think it  
22 depends on what your goals are, and what you're tasked to  
23 do and how you think you can lead the profession the best.

24           You know, we often sit here -- you know, Bar  
25 executives around the country, you know, you're in a

1 unique position in that you get to have a conversation  
2 about, if you could build it today, what would you build?  
3 And, you know, I think having the creativity to do that  
4 and to think about what you're tasked to do and what you  
5 may build, you know, you could come up with anything you  
6 wanted, really.

7 MR. PASTERNAK: Okay. I think Elizabeth has a  
8 question for you, Ellen.

9 MS. PARKER: Ellen, maybe you don't have enough  
10 time, but I'm interested in your example of lawyer  
11 referral services, where I take it you're saying we may  
12 not be regulating the right things given a dramatically  
13 changing marketplace for legal service. Can you say more  
14 about that, and particularly the special leadership role  
15 you think the Bar may have, the State Bar?

16 MS. MILLER-SHARP: Well, considering we know that  
17 so many -- we have a situation right now where so many  
18 LRIS programs, not just in California, but nationally, are  
19 struggling because they can't compete with these very  
20 well-funded legal business products. So as a result, we  
21 have two environments. We have the LRIS environment that  
22 is quite regulated, and then we have all of these other  
23 businesses that are trying to attach and provide very  
24 simple legal information to consumers. And those seem to  
25 be extraordinarily well-funded and dipping into the

1 market, perhaps serving a segment of the market that none  
2 of us effectively serve.

3           There's a huge opportunity in that, because at  
4 least those of us who work in voluntary Bars, we're very  
5 committed, as you are, in serving the public. You know,  
6 we have -- at least in San Diego, we have an LRIS program  
7 for that reason because we want to be able to help the  
8 public find qualified lawyers. And that's our value  
9 proposition, because we qualify them through the LRIS  
10 program.

11           But I think there's tremendous opportunity to  
12 think about what other ways can we serve the public,  
13 whether that's through making modifications to our  
14 existing LRIS rules and structure, or whether that's  
15 adding other options to the mix or, you know, creating  
16 different kinds of programs, even at our Bar associations  
17 to do that. There's a huge amount of opportunity.

18           There's also a great opportunity for the State  
19 Bar together for us to think about what that looks like.  
20 If we have a shared goal, which is to serve the public,  
21 and we're all currently exercising that vision to our LRIS  
22 programs, we have a great opportunity to come together and  
23 talk about what product, or what service or what platform  
24 is the best for the future.

25           Did that answer your question?

1           MS. PARKER: Well, I guess my question had kind  
2 of a second part to it, and that is: Is there some  
3 special value that you see the State Bar bringing to this  
4 conversation? Or could this happen with groups of local  
5 voluntary Bar associations leading the conversation?

6           MS. MILLER-SHARP: I think it could happen both  
7 ways. You know, I think Bars in general, and I think the  
8 State Bar -- because the State Bar has a wonderful ability  
9 and opportunity to convene conversations that should  
10 happen in our state. You have a different ability to do  
11 that than a regional or a local Bar could. We could  
12 invite others to have the conversation, but it has a  
13 different level of perhaps influence if the State Bar is  
14 asking that conversation or convening that conversation.

15           I think, you know, when I worked as a program  
16 developer for alternative dispute and middle income  
17 programs in the '90s, that was what the State Bar did. I  
18 went around the state and I convened a whole lot of  
19 different conversations, and I was able to do that as a  
20 representative of the State Bar. I can bring different  
21 stakeholders -- even in a local community, I could bring  
22 different stakeholders together, and it may not have been  
23 comfortable having that conversation if it had not been  
24 for me in my capacity as the State Bar bringing them  
25 together.

1           So I think the State Bar has a tremendous role  
2 and influence to convene.

3           MR. PASTERNAK: Ellen, thank you very --

4           MS. MILLER-SHARP: I have to run to my meeting.  
5 And I will be happy to join you back if you have other  
6 questions.

7           MR. PASTERNAK: You know, it looks like people  
8 don't have questions. Thank you for joining us. And we  
9 appreciate you sticking around a few minutes late. Thank  
10 you.

11          MS. MILLER-SHARP: Thank you. Good luck with  
12 your work. Bye-bye.

13          MR. PASTERNAK: Bye.

14          Okay. We're going to take a shortened lunch  
15 break now. We have our next speaker here. We'll break  
16 until 12:30. And to the extent we're not done with lunch,  
17 we'll bring it back in here and we'll hear from Dave Jones  
18 and members of his staff here as well.

19          (The noon recess was taken from 12:05 p.m. to  
20 12:39 p.m.)

21          MR. PASTERNAK: We're very pleased to have with  
22 us a special guest, Dave Jones, who's the California  
23 Insurance Commissioner. We get to hear about a different  
24 regulatory model now, one that is, I think, somewhat  
25 unique.

1 Dave was elected on November 2nd, 2010, and  
2 reelected November 4th, 2014, as the Insurance  
3 Commissioner, which regulates the California insurance  
4 market.

5 Insurers collect \$259 billion a year in premiums  
6 in California, making it the nation's largest insurance  
7 market.

8 (Interruption regarding Mr. Pasternak's  
9 microphone not being on.)

10 MR. PASTERNAK: Oh, I'm sorry, I thought I had it  
11 on. Okay. Sorry. Do I need to start over? No? Yes?

12 MR. JONES: It's fun for me to hear it twice.

13 MR. PASTERNAK: At any rate, Dave has been  
14 elected twice as the Insurance Commissioner. He's in his  
15 second term. He regulates the California insurance  
16 market.

17 And what I was saying when I was told my mic  
18 wasn't on is that insurers collect \$259 billion a year in  
19 premiums in California. It's the nation's largest  
20 insurance market. It's no big surprise.

21 Dave began his career as a legal aid attorney  
22 providing free assistance to the poor with legal services  
23 in Northern California from 1988 to 1995. In 1995, he was  
24 one of 13 Americans awarded the prestigious White House  
25 Fellowship. And he served in the Clinton administration

1 for three years as Special Assistant and Counsel to United  
2 States Attorney General Janet Reno. He served on the  
3 Sacramento City Council from 1999 to 2004.

4 Dave, we're thrilled to have you with us, and  
5 look forward to hearing your comments about your agency,  
6 your position as a regulator, and your thoughts about the  
7 State Bar and the things about how we are set up these  
8 days. So, Dave, it's all yours.

9 PRESENTATION BY MR. DAVE JONES:

10 MR. JONES: Well, President Pasternak, Trustees  
11 of the State Bar, Miss Parker, and staff of the Bar, and  
12 those who are here in the audience, and those listening on  
13 the phone and potentially watching on the Web, it's a  
14 pleasure to get an opportunity to make a presentation to  
15 this important Task Force of the State Bar. Thank you for  
16 inviting me to do so.

17 With me is Mr. Keith Kuzmich. Mr. Kuzmich is a  
18 career official at the Department of Insurance, which I  
19 lead as Insurance Commissioner, and is the Division Chief  
20 who oversees our Bureau of Licensing, which is principally  
21 responsible for licensing the 360,000 agents and brokers  
22 that we oversee at the Department of Insurance.

23 Just a little bit of an additional overview.  
24 President Pasternak, thank you for providing a little bit  
25 of context. The Insurance Commissioner of California is

1 directly elected by the voters of California just as all  
2 of the constitutional officers are. I lead the Department  
3 of Insurance, which has 1300 employees officed in San  
4 Francisco, L.A. and Sacramento, and then five satellite  
5 law enforcement offices.

6 Our principal mission is that of the Consumer  
7 Protection & Regulatory Agency. We regulate the largest  
8 insurance market in the United States and the sixth  
9 largest insurance market in the world. Whereas President  
10 Pasternak said, insurers collect \$259 billion in premiums  
11 and have collectively \$7.5 trillion in assets under  
12 management.

13 We have broad regulatory authority conferred upon  
14 us by the legislature through the Insurance Code. That  
15 authority includes the regulation of rates for property  
16 and casualty insurance, the regulation of the financial  
17 condition of insurers, all insurers regardless of product  
18 line as well.

19 We have a law enforcement function, a piece of  
20 which I'll get to in a moment. But I have 300 law  
21 enforcement personnel who work under my leadership who  
22 investigate fraud against insurance and criminal  
23 violations of code by the agents and brokers that we  
24 license.

25 We have the authority to take over insurance

1 companies when they face financial distress. We receive  
2 about 120,000 calls to our Consumer Hotline a year, and we  
3 go to bat for consumers in their dispute with insurance  
4 companies. We also have the ability to bring enforcement  
5 actions against insurance companies that violate our code  
6 and meet out various sanctions.

7           What I thought I would focus on and what's of  
8 most relevance, I believe, to this Task Force is our work  
9 licensing 360,000 agents and brokers who transact  
10 insurance in the State of California. We currently issue  
11 more than 30 types of licenses, certifications and  
12 registrations to individual and entities, such as accident  
13 and health agents, life agents, property and casualty  
14 broker agents, insurance adjusters, third-party  
15 administrators, bail agents and title marketing  
16 representatives.

17           The statutes governing our program of licensure  
18 are contained in the California Insurance Code and are  
19 further set forth in Title 10 of the California Code of  
20 Regulations.

21           Our responsibility is to protect the public by  
22 determining the qualifications and eligibility of  
23 applicants for licenses for individuals and entities to  
24 act as insurance agents and brokers. These individuals  
25 entities are commonly known as insurance producers. And

1 I'll refer to them collectively using that term "insurance  
2 producer."

3 The Department licenses insurance producers --

4 MR. PASTERNAK: Dave --

5 MR. JONES: I apologize.

6 MR. PASTERNAK: -- the court reporter --

7 THE REPORTER: Every time you read from something  
8 you go very fast.

9 MR. JONES: I'll go a little slower then.

10 THE REPORTER: Thank you.

11 MR. JONES: I'm so excited about it, though.

12 It's hard not to be passionate about the work that I do.

13 I'll try to be mindful.

14 So these individuals are overseen by the  
15 department to make sure that only qualified individuals in  
16 organizations are transacting insurance in California.

17 As I mentioned a moment ago, there are 360,000  
18 individual agent and brokers. We have a total of 380  
19 insurance producers. So roughly 20,000 are entities,  
20 360,000 individuals. Approximately 65% are residents of  
21 California, while 35% are residents of other states who  
22 are transacting insurance business in California and  
23 require a license from us to do so. We receive  
24 approximately 80 license applications a year.

25 It's also our responsibility to take enforcement

1 actions with regard to insurance producers when they run  
2 afoul of the law. Just to give you some order of  
3 magnitude, in the recent calendar year for which we have  
4 current data, the department denied 554 license  
5 applications, revoked 424 licenses, suspended 50 licenses  
6 and issued 9 cease and desist orders on individuals  
7 transacting insurance without a license. So we also  
8 regulate and oversee enforcement against individuals  
9 pretending to be licensed producers in the State of  
10 California.

11 Just so that you understand how we are configured  
12 from a staff perspective, we have 72 staff in our  
13 licensing bureau specifically devoted to the license  
14 processing of license background reviews of insurance  
15 producers, as well as the other classes of individuals  
16 that we oversee, such as bail agents and insurance  
17 adjusters.

18 In addition, we have 92 investigators in our  
19 investigations division, which is a part of our  
20 enforcement branch, who are specifically charged with  
21 conducting investigations of agents or brokers or other  
22 producers when they act contrary to the law. And we have  
23 31 attorneys who are specifically tasked with handling  
24 enforcement cases against producers when they act contrary  
25 to the law.

1           So just to give you some sense of the  
2 requirements we impose on our licensees, to become  
3 licensed to sell life and health insurance in California,  
4 individuals must complete a 40-hour pre-license education  
5 course, complete a 12-hour education course on ethics and  
6 the California Insurance Code, and be cleared as a result  
7 of a fingerprint-based background check by the department,  
8 that includes reviews by both the California Department of  
9 Justice and the Federal Bureau of Investigation. Our  
10 licensees have to pass successfully a qualifying  
11 examination to demonstrate their competence to be an  
12 insurance producer. They also have to submit an  
13 application which requires the applicant to disclose any  
14 criminal and administrative background history, such as  
15 prior convictions, administrative actions and bankruptcies  
16 and they pay a filing fee.

17           Our licenses run for two years, and then the  
18 individuals and entities have to come back for renewal.

19           To begin transacting insurance after they receive  
20 their initial license, the insurance producers have to  
21 either be appointed by an insurance company, or an  
22 insurance agency or have a \$10,000 bond to act as a  
23 broker. To transact property and casualty insurance,  
24 individuals may act as either an agent or broker. But to  
25 transact life and health insurance, individuals can only

1 act as an agent of an insurer.

2           Individuals interested in being licensed complete  
3 their pre-licensing education requirements either online  
4 or in a classroom from education training providers. The  
5 providers and their courses are approved by the  
6 department's licensed education staff to make sure that  
7 these courses are appropriate and contain sufficient  
8 material for the required number of hours under our code  
9 and regulations.

10           California residents must pass a qualifying  
11 examination covering the type of insurance producer  
12 license they are seeking, and we partner with an  
13 examination contractor to offer 24 examination sites  
14 located throughout California.

15           The exams themselves, as I said, are conducted  
16 either remotely or at the sites. There is an examination  
17 fee of \$50. It's collected by the contractor for the  
18 department, and an initial \$33 convenience fee, if the  
19 individual chooses to take the exam at one of our 21  
20 contractor locations.

21           The examination proctor provides the individual  
22 with the results of the examination immediately upon  
23 completing the exam. So unlike sitting for the Bar, you  
24 don't have to wait in agony for that letter or that  
25 posting to occur online, you get told right away whether

1 you passed or not.

2 I mentioned as well that we fingerprint  
3 applicants. Most individuals get fingerprinted at the  
4 time they take the examination, although you have the  
5 option of being fingerprinted beforehand.

6 With regard to nonresident applicants, we require  
7 that they be fingerprinted by a local law enforcement  
8 agency in their home state and then send their fingerprint  
9 cards to their department's Live Scan fingerprint vendor.

10 Once we've collected those fingerprints, we then  
11 electronically transmit them to the Department of Justice  
12 which does matches against its criminal database to  
13 determine whether the fingerprints are cleared, or if  
14 there's a hit, which indicates the applicant has a  
15 criminal record. DOJ also sends the fingerprints  
16 electronically to the FBI which performs the same match  
17 against their database.

18 After an individual completes their pre-licensing  
19 educational requirement and passes the exam, they then  
20 have to complete and submit a license application to the  
21 department. There's an additional cost of \$170 associated  
22 with that.

23 Our staff then evaluate the applications and  
24 evaluate the results of the fingerprint background checks.  
25 If there are deficiencies in the application, we notify

1 the applicant that the department cannot proceed until the  
2 deficiency has been addressed.

3           Individuals who disclose a conviction or are  
4 found from the fingerprint results to have a criminal  
5 record, are sent to our staff for further review. And  
6 during this time the applicant is required to provide a  
7 written explanation of the circumstances underlying the  
8 conviction; court documents, arrest reports; and if they  
9 fail to disclose the conviction to us, the reason why they  
10 failed to do so.

11           So it's a very robust regulatory system, at the  
12 end of which we do one of three things: We either issue  
13 an unrestricted license to the individual applicants or  
14 entity; we enter into a settlement agreement with the  
15 applicant for a restricted license; or we deny the  
16 license. If a license is denied, the individual is  
17 afforded the right to request a hearing in front of an  
18 Administrative Law Judge from the California Office of  
19 Administrative Hearings.

20           Now, if an applicant is denied, but elects to  
21 have their case heard by an ALJ, the ALJ makes a ruling  
22 and then the Insurance Commissioner can either accept or  
23 reject the ruling of the ALJ. We post the results of  
24 those particular proceedings on our Web site.

25           So in addition to that licensing process, which

1 is designed to make sure that only qualified individuals  
2 with a requisite experience, background, training and  
3 integrity can transact insurance, we also have a strong  
4 law enforcement function, which I described a moment ago,  
5 where we investigate complaints against producers that are  
6 brought to our attention. Remedies available to the  
7 department in the course of these investigations or as a  
8 result of these investigations include administrative  
9 actions brought by the department's legal branch to revoke  
10 the insurance producer's license, impose monetary  
11 penalties, seek corrective action, cease and desist  
12 orders, and criminal prosecutions where applicable by the  
13 county District Attorney's Offices.

14           We are able to conduct criminal investigations if  
15 an agent or broker has committed a crime. I provide grant  
16 funding to the District Attorneys to assist them in  
17 defraying the cost of prosecutions in those circumstances.

18           So that's a bit about our process and some of the  
19 work that we do to make sure that if folks are in  
20 violation of code, that we hold them accountable.

21           Just to give you some order of magnitude of the  
22 number of cases that we have open and the number we close  
23 in any year with regard to those that are under  
24 investigation, in 2015 we opened 752 cases. In 2015 we  
25 closed 777 investigative cases. There were 105 criminal

1 referrals in those cases and 143 legal and administrative  
2 referrals.

3           So amongst Departments of Insurance across the  
4 United States, California, by virtue of laws enacted by  
5 the legislature, has one of the strongest set of rules and  
6 requirements as it relates to obtaining a license and  
7 maintaining your license in good standing, and we take all  
8 of that very seriously at the Department of Insurance and  
9 our resource to enable to make sure we hold folks  
10 accountable to the highest standards.

11           One final thing I want to share with you before  
12 I'm happy to answer any questions you might have about  
13 that process and the work that we do, is that I did have  
14 the privilege of serving as the Chair of the Assembly  
15 Judiciary Committee when I served in the State Assembly.  
16 For four years I served as the Chair and had quite a bit  
17 of interaction with the State Bar in that capacity.

18           And one of the important components of the State  
19 Bar from my perspective as a Californian, as a California  
20 elected official and as a lawyer, is the Bar's work with  
21 regard to assisting and encouraging organizations and  
22 lawyers that provide free legal services to the poor. The  
23 Bar has a number of different programs in this regard,  
24 including a checkoff on the Bar dues bill that allows  
25 members of the Bar to voluntarily donate funds to the

1 Equal Access Fund of the Bar, which then gets granted to  
2 Legal Aid organizations. And it was a bill that I  
3 authored as Chair of the Judiciary Committee that  
4 established that Bar dues checkoff.

5           And I think that's a very important element of  
6 the Bar's overhaul activities in trying to make sure that  
7 there are legal services available to the poor.

8           And the current structure of the Bar, I believe,  
9 does lend itself to the Bar's continued capacity to  
10 support legal aid organizations in this regard.

11           The fact that there is a Bar dues that has to be  
12 paid by all members of the Bar, affords the Bar the  
13 opportunity through that checkoff to encourage voluntary  
14 participation in support of legal services organizations.  
15 And I believe that's a very positive thing. And I applaud  
16 the Bar for doing that. And I applaud the Bar for the  
17 various programs that it administers to try to encourage  
18 lawyers to fulfill their ethical obligations to engage in  
19 pro bono work, but also to support those lawyers that have  
20 chosen to devote the full measure of their work towards  
21 serving the poor.

22           So thanks for the opportunity to share with you a  
23 little bit about what we do. And I'm happy to answer any  
24 questions that, Mr. President, you or the other trustees  
25 might have.

1           MR. PASTERNAK: Thank you very much for that  
2 presentation.

3           I'd like to start by asking you a question: As  
4 far as I know, you're somewhat unique in terms of the  
5 California regulatory agency in that you're elected, which  
6 I think is a relatively recent phenomena.

7           Can you tell us about the transition, about how  
8 the Department of Insurance used to operate, what the  
9 governing body or board was like, and when the change  
10 occurred.

11           MR. JONES: Absolutely. So there has been an  
12 Insurance Commissioner and an Office of Insurance or  
13 Department of Insurance in California since shortly after  
14 the Civil War. At that time and until 1988, the position  
15 was appointee of the governor. It was lodged in various  
16 other agencies of the State of California during the  
17 course of various reorganizations over that -- over a  
18 100-year period, the office grew in size, became its own  
19 department, but was an appointed official until  
20 Proposition 103 was enacted by the voters of California in  
21 1988.

22           Proposition 103 established the office as an  
23 elected office. And in addition, that gave the Insurance  
24 Commissioner rate regulatory authority over property and  
25 casualty insurance.

1           So since 1988, the office has been directly  
2 elected by the voters, and the holder of that office is  
3 responsible for leading the department and carrying out  
4 all of the various insurance regulatory responsibilities  
5 vested in that office by legislature through duly enacted  
6 laws under the insurance code.

7           For the Insurance Commissioner, it does afford a  
8 great deal of autonomy and an independent capacity to duly  
9 enforce the laws of the State of California. And I  
10 believe it's been a very positive thing for California to  
11 have a directly elected Insurance Commissioner.

12           The commissioner is responsible to carry out the  
13 laws of the State of California with regard to insurance  
14 regulation, and is directly accountable to the voters by  
15 virtue of being directly elected.

16           And I think that that mechanism has worked very  
17 well, because it provides a degree of independence with  
18 regard to the regulatory functions of the department.

19           MR. PASTERNAK: Thank you. Other questions,  
20 comments?

21           Denny?

22           MR. MANGERS: Welcome, Commissioner, and good  
23 friend Dave Jones.

24           So as a public member here, one of the things I  
25 continue to try to sort out is that organizations like

1 yours are dealing with a group of professionals who  
2 ultimately, like attorneys, have the potential for doing  
3 great good and of being great service to people, but they  
4 also have demonstrated a potential for doing great harm as  
5 well.

6           In your case, apparently it was determined that  
7 we needed to go so far as to, among the professions,  
8 actually elect the regulator for the insurance  
9 professionals; yet over here, another group of  
10 professionals, attorneys, are still permitted to regulate  
11 themselves, in essence, to have few public members in  
12 comparison, or in ratio to the professionals. And I'd  
13 just like to -- in attorney parlance, this would be  
14 leading the witness.

15           But I am interested in your view of what -- since  
16 you are also an attorney, what differentiates attorneys in  
17 this profession from what you've now come to realize, at  
18 least in this other profession, has to be a rather more  
19 independent and vigorous process in terms of public  
20 perception or reality? You get the drift?

21           MR. JONES: I think there's no question that  
22 having the Insurance Commissioner be directly elected and  
23 having it be an independent autonomist's office, as much  
24 as the State Bar is an independent regulatory apparatus,  
25 affords me as the Commissioner in my department the

1 ability to apply the law to whatever regulatory facts are  
2 in front of us and make appropriate judgment calls without  
3 having to be concerned about political interference from  
4 other elements of the executive branch.

5           Obviously, we understand and are fully supportive  
6 of the legislative branch's oversight. And we also, of  
7 course, are subject potentially to oversight by the  
8 judicial branch. If someone believes they're aggrieved by  
9 a decision by me or my department, then a civil suit lies.

10           So it's not to say that we're completely  
11 independent. I mean, we operate in the same system of  
12 checks and balances as any regulatory agency does.

13           On the question of the licensees regulating  
14 themselves, I would note that there's nothing that  
15 precludes an insurance professional from being elected  
16 insurance commissioner. So although I do think that at  
17 least in the context of insurance regulation direct  
18 election is a very positive thing, there is no prohibition  
19 against an agent or broker, any of the 360,000 individuals  
20 that I license, or any of the, dare I say it, hundreds of  
21 thousands of individuals that work for insurance  
22 companies, are on their boards, from running, and we have  
23 had individuals run as well.

24           So I don't think that direct election is  
25 dispositive with regard to that particular issue.

1           But what it does mean is that at least with  
2 regard to our regulatory authority, we are able to, I  
3 believe, make the sorts of decisions that are appropriate  
4 under the law. And do so knowing that we are free from  
5 interference from other -- political interference from  
6 other elements of our governmental structure.

7           Again, mindful, too, that there's oversight, and  
8 we're always responsive to oversight. And then there's a  
9 final check and balance of the courts as well. So I think  
10 overall it works really well.

11           MR. PASTERNAK: Other questions or comments?

12           MS. PARKER: I'm wondering if you can tell us  
13 what caused the change in structure. And as a related  
14 question, I didn't hear you say whether there is any kind  
15 of board that you respond to.

16           MR. JONES: The beautiful thing about being the  
17 Insurance Commissioner is there's no commission. That's a  
18 joke for those of you who are listening on the phone.

19           So it is an independent authority that's vested  
20 in a single elected individual. Don't get me wrong. I  
21 have a team of 1300 very competent, trained civil servants  
22 and professionals who do all of the things that I  
23 described to you in a nutshell that we do. But unlike the  
24 Public Utility Commission, or the State Bar Board of  
25 Trustees, or the Energy Commission or any of the other

1 independent regulatory entities, there is no commission  
2 that oversees the Insurance Commissioner.

3           The genesis for making this office elected, I  
4 think, was a response to a concern by consumer  
5 organizations about some history of appointments of  
6 insurance professionals to be the Insurance Commissioner.

7           And so I think the thought by the consumer groups  
8 was that there would be less likelihood of that if it was  
9 directly elected. So this is probably a further  
10 elaboration on Mr. Mangers' question, as I think about it  
11 now, but certainly not a guarantee that an insurance  
12 professional would not end up serving in the position.

13           MR. PASTERNAK: Gwen?

14           MS. MOORE: Since you've taken over, are there  
15 things that you've done to make sure that the intent of  
16 what this was about was to make it more accountable? I  
17 know there are some changes that you have made within the  
18 office to move towards making sure that consumer  
19 protection and things were there. Can you name us a  
20 couple of those?

21           MR. JONES: Absolutely. So one of the things  
22 that we've done, among many, is sponsored legislation and  
23 promulgated regulations that are designed to further  
24 protect consumers from being taken advantage of in the  
25 transaction of insurance.

1           One particular example that comes to mind is in  
2 the context of the sale of life insurance products and  
3 particularly annuities, which can be very complicated  
4 financial instruments. And unfortunately, there were  
5 cases where either insurance companies or insurance  
6 producers were selling long-term annuities with very high  
7 surrender penalties to people very, very senior in age for  
8 whom the benefit of such a financial instrument was quite  
9 questionable.

10           And so early in my tenure I sponsored legislation  
11 to impose suitability standards that insurance companies  
12 and insurance producers have to conform to determine  
13 whether the individual that they're selling the annuity to  
14 is, in fact, one who the sale of that product would be  
15 suitable to sell it to them. There are various  
16 disclosures that have to be made to the individual about  
17 the transactional costs associated with the product, the  
18 longevity of the product, the surrender penalties  
19 associated with the product.

20           And in addition, I sponsored legislation which  
21 was duly enacted that prevents insurance producers from  
22 earning a commission on the sales of an annuity and a  
23 commission on the sales of a reverse mortgage. Because  
24 the other thing we were seeing was in some cases  
25 individual agents are going to a person who was a senior

1 and convincing them to buy a reverse equity mortgage and  
2 pull capital out of their home ostensibly to help them  
3 with health needs or living needs and then earn a  
4 commission on them, and then sell them an annuity to lock  
5 that money back up for another 20 years or so and high  
6 surrender penalties to get at it and earn a commission on  
7 that.

8           And so those are examples, of which there are  
9 many, where we've sponsored additional legislation and  
10 then enacted regulations to make sure consumers were  
11 protected in those transactions.

12           MR. PASTERNAK: I have another question for you.  
13 I think both of our agencies are somewhat unique, the  
14 State Bar being an agency that's part of the Supreme  
15 Court, I think the only regulatory agency that really  
16 falls within the judicial branch other than the Judicial  
17 Performance Commission, and your agency where you're the  
18 only elected official who is overseeing the regulatory  
19 function, I believe, in California.

20           Are there any other regulatory agencies, boards  
21 in California, that you're aware of that are unique that  
22 are not the Department of Consumer Affairs type of  
23 regulatory agencies?

24           MR. JONES: I think that other than the Bar and  
25 my office, I'm hard-pressed to identify others in

1 California's regulatory system. Now, I say that with some  
2 qualification, because the State Public Utilities  
3 Commission, for example, I believe does issue licenses for  
4 various types of entities that it licenses. It, too, is  
5 independent, more of a commission structure, though,  
6 obviously, and there may be some others like that.

7           But with regard to large numbers of  
8 professionals, most, if not all of that, for various other  
9 professions, is lodged within the Department of Consumers  
10 Affairs. So I'm sure I'm forgetting something, but I'm  
11 not -- it's not -- other examples are not immediately  
12 coming to mind.

13           MR. PASTERNAK: Thank you. Any other questions?

14           Commissioner Jones, thank you very much.

15           MR. JONES: Thanks for having me. I really  
16 appreciate it.

17           MR. PASTERNAK: We're very pleased. And thank  
18 you for your comments.

19           MR. JONES: Thank you.

20           MR. PASTERNAK: And I apologize for omitting your  
21 service in the legislature, which for some reason was not  
22 in my summary, and I forgot about it. And I do apologize  
23 for it.

24           MR. JONES: That's okay. Several of us around  
25 this table are recovering legislators, Miss Moore and

1 Mr. Mangers.

2 MR. PASTERNAK: There's still an opportunity for  
3 you to come onto the Bar Board some day, too.

4 MR. JONES: I would be delighted to do that at  
5 some point. Thank you again.

6 MR. PASTERNAK: Thank you.

7 Okay. I believe next we do have public comment.

8 Is Donna Parkinson here with Perry Segal? Are  
9 the two of you going to present together?

10 MS. PARKINSON: I don't think so.

11 MR. PASTERNAK: Okay. Then Donna, why don't we  
12 hear from you first.

13 MS. PARKINSON: Thank you for letting me make a  
14 comment. I will try to be brief. It's getting late in  
15 the day.

16 PRESENTATION BY MS. DONNA PARKINSON:

17 MS. PARKINSON: I'm the former chair of the  
18 Business Law Section. I'm an advisor now. I'm also the  
19 co-chair of a task force that's studying the issue of  
20 voluntary versus unified bars. I'll try to give you the  
21 how, what, why and where of what we're doing, how we got  
22 there, without going into too much detail and too much  
23 depth.

24 This came to our attention as kind of a  
25 confluence of events, because this Task Force was

1 reconstituted. We saw Elizabeth's memo, at the same time  
2 that Bagley-Keene came onto the scene, and we have had  
3 dues -- increases significantly over the last couple of  
4 years. And the assessment allocation has been seriously  
5 increasing, along with a lot of other problems that the  
6 sections have been facing.

7           Those things came together and it became  
8 appropriate to form a task force to study these issues.

9           As I say, I'm a co-chair of that task force. So  
10 the last month we've been meeting on Monday mornings by a  
11 conference call. We'll see how that goes after  
12 Bagley-Keene.

13           And then we also as an ad hoc group reached out  
14 to the other sections who are facing similar problems, and  
15 have had two conference calls with the other sections  
16 about these issues. We have included the counsel of  
17 Sections Task Force, that's what Perry is probably going  
18 to talk to you about. They've been on the calls.  
19 Elizabeth was on our last call. Pam Wilson from Samuelson  
20 has been on the calls. So we have been collaborating with  
21 the other bodies that govern the sections. But we wanted  
22 to move quickly because this timeline is short.

23           Just to highlight the issues that we're facing,  
24 we did a pros and cons sheet, and it's quite lengthy.  
25 It's six pages long. Sort of what's it like on a

1 voluntary Bar side, what's it like on a unified Bar side,  
2 how would it look; where we would we end up? We also did  
3 a memo in the beginning that talked about the problems  
4 that we're facing.

5 I just wanted to highlight a couple of those  
6 problems right now. I'm sure you're very familiar with  
7 Bagley-Keene. It affects the sections differently than it  
8 affects these types of meetings. Because our group does  
9 education, we put on programs, we do some legislation.  
10 But we're constricted on what we can do because of the  
11 Keller case.

12 We do journals, we mentor, we publish  
13 E-bulletins. What we do, we believe, makes lawyers better  
14 practitioners because they get up-to-the-date information.  
15 We've done collaborations with the CYLA where we use their  
16 mailing list. And then we did how-to Webinars with them  
17 on a lunch basis. We shared the proceeds with them.

18 When I was the chair in 2011, 2012, we gave them  
19 a big \$6,000 check because they don't, as everyone knows,  
20 have their own funding. So we helped them with that.

21 So what we do really helps people. But what we  
22 do also doesn't lend itself to formal pre-noticed  
23 meetings. It is done by e-mail, it is done by conference  
24 calls. People call in from outside.

25 So if Bagley-Keene is interpreted strictly, it's

1 going to slow down, if not hamper, what we do on a regular  
2 basis, the products that we produce.

3           The Business Law Section has 8,000 members. At  
4 any given time we have 250 to 300 people actively  
5 volunteering donating their time to do what we do. We  
6 have 14 sections, and each one of those sections has its  
7 own executive board. So we have insolvencies, nonprofits,  
8 corporations, agribusiness, all of these various business  
9 law units that are constantly producing products,  
10 publications, materials, products, and so forth. So  
11 Bagley-Keene is going to be a bit of a problem for us.

12           The other big problem has been the assessment  
13 increases. When I was Chair, the income for our section,  
14 the BLS, Business Law Section, was about \$600,000. The  
15 assessment was about \$250,000.

16           As I understand it, there is a separate task  
17 force that's been meeting with Leah Wilson studying the  
18 assessment and trying to figure out how to make it work,  
19 but it's gotten so much worse now.

20           Our projected income for 2015 is to be about  
21 \$787,000. So we've increased our dues, which I'll just  
22 talk about in a second. But the assessment is going to be  
23 \$538,000. So two-thirds of our dues collected are going  
24 to overhead facilities, et cetera, that we have no control  
25 over. There's no way we can reduce that, change it, make

1 it different. The only thing we have control over is, you  
2 know, what kind of a lunch we buy at a meeting. So that's  
3 a big problem for us.

4           And even though we're increasing the dues,  
5 they've gone up over and over. Our dues are now 95. Some  
6 of the dues are over a hundred dollars. Those increased  
7 dues are just not able to keep up with how the assessment  
8 is increasing.

9           I had a conversation with Terry Szucsko, who's  
10 the chair this year of the Solo & Small Firms Section,  
11 which I think is a critical section, because that section  
12 is one of the sections that needs support, needs  
13 education, needs help, because they, I understand, are --  
14 sometimes end up in front of the Disciplinary Board  
15 because they're out there on their own by themselves.

16           You know, we don't have a program like the  
17 doctors, of course, everyone knows this, to get people  
18 some kind of mentoring program before they start  
19 practicing. So people just start practicing.

20           So solo and small firms is an important section.  
21 But he told me that with the way the current dues  
22 situation is and the way the assessment is, he doesn't  
23 think that they will be around next year. So I thought  
24 that was a very concerning problem.

25           The only other thing I would say is that I did

1 study the dues -- the voluntary summary that was provided.  
2 I don't know, Elizabeth, who prepared those summaries. I  
3 had a concern about the one for the voluntary bars, the  
4 summary of voluntary bars, because the percentages were  
5 for licensed attorneys versus Bar Association members.  
6 And I recalculated it using active attorneys versus Bar  
7 members.

8           There are 18 voluntary Bar states. Of those, if  
9 you recalculate it that way, you come out with an average  
10 of 72% of the active members as members of the local bars,  
11 voluntary bars, with the outlier being Massachusetts with  
12 only 25%. But you've got three voluntary Bar states that  
13 have over 100%, which I assume that's maybe some of the  
14 nonactive but licensed lawyers that are still practicing.  
15 Or maybe it's like Washington State where they have  
16 members that are not lawyers, but they are licensed in  
17 some way so they can be practicing and they can be members  
18 of the voluntary Bar. I don't know.

19           If you look at the ABA summary, \$274 is the  
20 average dues for the voluntary Bar states. Just do a  
21 little bit of math, and it's in the neighborhood of  
22 \$30 million that a voluntary Bar would have a lot of money  
23 to do some good with.

24           But we're not -- we haven't taken a position.  
25 I'm looking at all these statistics. We are looking at

1 the statistics. What the Business Law Section is doing  
2 now is we're meeting tomorrow morning with our long-range  
3 planning group trying to reach a consensus on what the  
4 group feels is the correct path, or what things need to be  
5 there, whether it's unified or whether it's voluntary,  
6 what things need to be there so the sections can survive.

7 And then we'll meet with the sections, probably  
8 in collaboration with the council, to try and reach some  
9 kind of a consensus with the sections on what things need  
10 to happen so the sections can do what they do, make the  
11 practices for lawyers better and still survive in a good  
12 way. So those are my comments.

13 Are there any questions?

14 MR. PASTERNAK: Any questions? So let's hear  
15 from Perry and then I'll follow up.

16 MS. PARKINSON: Sure.

17 MR. PASTERNAK: Perry Segal is the Chair of the  
18 Counsel Task Force.

19 MR. SEGAL: Thank you. I'll be extremely brief.  
20 I just wanted to explain why I'm here and under what  
21 authority I'm here.

22 PRESENTATION BY MR. PERRY SEGAL:

23 MR. SEGAL: I was appointed to the Counsel's  
24 official Task Force by the other five counsel officers for  
25 the Counsel of Sections. All the officers are elected, so

1 I was appointed by them. So I represent the official task  
2 force of the counsel. I think there's been some confusion  
3 as to who's with what. But really, that was all I'm hear  
4 to tell you. I'm actually chairing three different  
5 groups, looking at Bagley-Keene, the allocation assessment  
6 and the unification.

7 We have not met, and our first meeting is March  
8 the 1st. And I just want to explain why that is. In my  
9 opinion as the Chair of the counsel, we didn't have any  
10 information to meet about yet. The allocation Task Force  
11 met with Leah Wilson last Thursday -- or was it Wednesday.  
12 Extremely helpful. And also I wanted to wait for this  
13 meeting to get information gathering before our task force  
14 met on the 1st.

15 But we actually have been in existence prior to  
16 Donna Parkinson's group who, by the way, we welcome all  
17 the conversation. That's not the point. I just think  
18 there's some confusion as to who's with who.

19 And I would only request, if possible, that you  
20 should keep talking to who you're talking to. But if you  
21 want to go through the entire counsel, since we're the  
22 ones who will eventually be making a report to you, if  
23 somebody could please get in touch with me as well just to  
24 keep me in the loop on what's going on, that's basically  
25 all I have.

1           MR. PASTERNAK: Perry, thank you. And Donna as  
2 well.

3           I just want to say that I have a great concern  
4 about the sections' concerns. I consider the sections to  
5 be very important. I agree with what Donna said, talking  
6 about one section, Solo & Small Office Practitioner  
7 Section. But I think what all the sections do in terms of  
8 providing MCLE opportunities, in terms of assisting with  
9 legislature's request for input on legislation and other  
10 functions as well, it's a very important attribute in what  
11 we're trying to do and what our mission is in public  
12 protection.

13           Having said that, I think you understand that our  
14 hands are tied with respect to Bagley-Keene and with  
15 respect to the finances. But I want to give you my  
16 assurance that I'll do whatever I can to make life  
17 workable for you within those restrictions. And I hope  
18 that we keep a dialogue going and don't simply hear a  
19 response that we're taking certain action without an  
20 opportunity to try and resolve the problems and issues  
21 that you're experiencing.

22           And I also encourage you -- I heard the numbers  
23 that were just given by Donna about the projections of a  
24 voluntary Bar's membership and revenue, and I really  
25 encourage you that if you're considering that avenue, to

1 make sure that you really do your homework in terms of  
2 trying to project what it would look like in California.

3 I think we're a very unique state in terms of the  
4 number of local, geographic, minority, ethnic Bar  
5 associations that we have. You know, just as an example,  
6 I belong to three voluntary -- I guess four voluntary Bar  
7 associations, if you include the ABA. And I pay over  
8 \$2,000 a year in dues to those four bars. I doubt if  
9 anything would cause me to join another voluntary Bar  
10 Association.

11 And unfortunately, I think there are lots of  
12 other attorneys in California who have similar situations,  
13 who belong to multiple voluntary Bar associations, and I  
14 suspect that in most other states you don't have that  
15 situation.

16 So I don't think our situation is comparable to  
17 the numbers that you find in other states. I did want to  
18 say that.

19 Denny, I think you had your hand up.

20 MR. MANGERS: Donna, I thought, did a good job of  
21 talking about the degree to which the allocation of  
22 overhead is problematic from a sections standpoint.

23 I'm interested in having you, perhaps with more  
24 specificity, talk to us about the impact of Bagley-Keene,  
25 which I need not say was not intended to affect people

1 like you or your organizations. It's by association in a  
2 unified Bar that it falls on you.

3           So to what extent does it fall on you? How does  
4 it complicate your life? And what is the remedy  
5 ultimately if we continue to operate as we are with you  
6 integrated into a regulatory agency that of course has to  
7 do Bagley-Keene, and you who have configured differently  
8 wouldn't have to?

9           MR. SEGAL: Well, I think I can only go with what  
10 I know today. Because there's a lot of information going  
11 back and forth how this is going to be addressed.

12           I can say if Bagley-Keene is taken to its extreme  
13 definition, it would make it extremely difficult for the  
14 sections to conduct business at all, except as one group  
15 in one room.

16           But then we had an opinion from general counsel  
17 that if we're on a call, for example, rather than give a  
18 personal address, we can use either the San Francisco  
19 address or the State Bar's L.A. address. And then there's  
20 a big argument whether that's correct or not.

21           So we just -- I just saw a list of Q and A, 42  
22 questions that's been prepared about Bagley-Keene from  
23 general counsel. There's only the Q's. There hasn't been  
24 the A's yet.

25           So I don't even know what the A's are yet to be

1 able to answer that question. And until I see it, I can  
2 say that if it's taken to extreme it's going to be very  
3 difficult for us to conduct.

4           For example, I don't joke about this. It can be  
5 taken extremely. But if you're a family lawyer, or like I  
6 was in criminal law, and you're dealing with some pretty  
7 nasty people, I don't want to give my home address and put  
8 my family at risk to get on a phone call that other people  
9 can find out where I live. So those are the kind of  
10 concerns I think are real concerns. But again, we're  
11 going to need a little more information than what we have  
12 today for me to give you an educated answer to the  
13 question.

14           MR. MANGERS: Has our counsel given you advice  
15 thus far that suggests that we as a body, the Board of  
16 Trustees, will have to adhere to a higher standard of  
17 Bagley-Keene than you in the sections? And if so, for  
18 what reason?

19           MR. SEGAL: Well, the general counsel doesn't  
20 really talk to me, if you mean me directly.

21           MR. MANGERS: You alluded to it, so I'm just  
22 following up.

23           MR. SEGAL: Alluded to?

24           MR. MANGERS: You alluded to the fact that  
25 general counsel had opined that there may be a lesser

1 standard of adherence to Bagley-Keene than what which we  
2 are now going to adhere to, and I just --

3 MR. SEGAL: Okay. Got you.

4 MR. MANGERS: You get the question?

5 MR. SEGAL: Yes, now I do. Yes. Well, I'm not  
6 qualified to say whether they're right or wrong, but I  
7 would say this: I'm going to have to look at somebody  
8 better qualified than me to answer the question.

9 If general counsel at the Bar tells me it's  
10 acceptable, I at least have to, on the surface, accept  
11 their ruling because they're basically saying, "You're  
12 acting on our advice and we'll indemnify you on that  
13 advice." That's the way I read it.

14 MR. MANGERS: Thank you.

15 MR. SEGAL: Thanks.

16 MR. PASTERNAK: Any other questions or comments?

17 Miriam.

18 MS. KRINSKY: Maybe I'm a little confused about  
19 two things. One is, I don't think any -- I understood  
20 the answer the same way you did. I understood that what  
21 OGC is looking at is what exactly are the contours of that  
22 between how do they play out; not that they out  
23 differently vis-à-vis the sections versus the Board.

24 I see Vanessa is nodding. So I think I'm  
25 understanding that simply OGC is continuing to look at

1 some of the ways that Bagley-Keene plays out, and how do  
2 we best understand and implement Bagley-Keene?

3           So I don't know Vanessa, if you want to chime in.

4           And maybe David, my second area of confusion, and  
5 I don't know if you want to chime in, this is the first  
6 I've heard of these two task forces. And I'm not really  
7 sure I understand, you know, what they consist of. I  
8 recognize they're not task forces of the Board, that the  
9 sections have put these groups together. But I was,  
10 again, just trying to understand a little more what these  
11 two bodies are, and are they working on a timeline to come  
12 back to this group with recommendations, or sort of how do  
13 their purposes differ from each other and who is on them?

14           MS. PARKER: Miriam, if I could interject here,  
15 and I think your question, too, Vanessa, is one I'd like  
16 to hear her answer, but we offered Perry and Donna the  
17 opportunity to speak in a public session, even though it's  
18 in the middle of the meeting. It's terrific to hear from  
19 them. But they're going to have ample opportunity, I  
20 think on the 4th, and so we'll get into this more deeply.

21           And I think, Denny, to your point -- we're just  
22 thinking at this point, there has not been any opinion,  
23 and obviously it has to be consistent. But as you know,  
24 when the Bagley-Keene requirement was imposed somewhat  
25 quickly, we were invited as well to think through other --

1 some small changes that we might be able to propose to the  
2 legislature to make some changes that might make this a  
3 more comfortable and operationally effective situation.  
4 So that's really what we're in the process of doing.

5           And finally, since I'm rattling on here, rather  
6 than to interject again, I want to offer to you, Perry, as  
7 I have to Donna, access to any information we're  
8 gathering. We're gathering a lot, we're gathering it  
9 quickly. It won't always be accurate. So we welcome any  
10 corrections that you may make. This is all, of course,  
11 going towards an ultimate report.

12           And I don't want to embarrass Linda Katz sitting  
13 back there, but will you raise your hand.

14           So Donna, if you've got corrections or questions,  
15 I hope you'll take them to Linda, because we'd sure like  
16 to know wherein there may be a problem.

17           MS. KATZ: If I could, she looked at different  
18 data, and I looked at the same data, and it didn't make  
19 sense to me because there were numbers that were over  
20 100%. And there's a question of whether you're looking at  
21 active members of the -- that are members of the voluntary  
22 associations versus licensed.

23           MS. PARKER: Let me just finally say, in  
24 gathering this data, it's very, very frustrating because  
25 there's not a perfect place to go where it's all been

1 collected using the same definitions, you know, the same  
2 comparisons, so there has to be a little bit of  
3 interpretation in all of this. But it has been an  
4 interesting but a challenging experience in many cases.

5 MR. MANGERS: May I follow-up with a question?

6 MR. PASTERNAK: Hold on one second.

7 Do you want to say something, Vanessa?

8 MS. HOLTON: I was going to move to the earlier  
9 question. But you're talking about the assessment, so did  
10 you want to stick to that issue?

11 MR. MANGERS: No. My question is about your  
12 part.

13 MS. HOLTON: Yeah.

14 MR. MANGERS: So go ahead.

15 MS. HOLTON: So the Office of the General Counsel  
16 has been doing training, as you recall, of sections,  
17 nonsection entities. And we just happen to have Dina  
18 Goldman who has been actually doing the training. I have  
19 seen the training she's done and overseen it and attended  
20 it. I'll let her come up and speak. But I don't know of  
21 any different double standard for us or for the Board --  
22 or the Board or the Governance Task Force or the sections.  
23 I do know that in the effort to bring Bagley-Keene into  
24 the 21st Century, because as I heard from a year ago, look  
25 into it, even Bill Bagley said it's taken on a proportion

1 he never anticipated or expected to take on.

2           But a couple of things that we've said is that  
3 because the sections are somewhat different than the  
4 Board, most of the time the Board or the Governance Task  
5 Force comes together in person, but because the sections  
6 are volunteer and they're disseminated all over, we have  
7 said that we are setting up in-person meetings with video  
8 capacity in the hopes that that will discourage people  
9 from attending individual's homes or offices from which  
10 they attend themselves. But we've not said that the  
11 sections can violate Bagley-Keene and not give that  
12 information.

13           If you look at some of our calendars on our  
14 postings, now we're seeing people's offices and home  
15 addresses on that.

16           The other thing we've said is we're exploring --  
17 having IT explore the concept of video or Skype or some  
18 other participation by a section member or a -- it would  
19 be applicable -- if we determine it's legal and  
20 permissible, it could be applicable to all of our  
21 entities, section and nonsection. But because of  
22 particularities of volunteer section members, we are  
23 exploring whether we could do video participation by a  
24 member of the section or a member of any other entity  
25 within the Bar that might be bringing Bagley-Keene into

1 the 21st Century.

2 But, you know, as David says, our hands are  
3 really tied. It says what it says. And as long as a  
4 section has to comply with it, it's going to take a harder  
5 hit than an entity like this or the Board.

6 I don't know if Dina wants to come up and answer  
7 the question that Denny raised.

8 MS. GOLDMAN: I think you answered it. We have  
9 put out numerous materials. And the answers to the 49  
10 questions, I think, are coming out later.

11 But interpret Bagley-Keene as Bagley-Keene. You  
12 know, we understand that it's having more of an impact on  
13 some of our entities than others because of the different  
14 types of work that they do.

15 MS. HOLTON: Much to the dismay of the sections.  
16 And, unfortunately, they tend to shoot the messenger. As  
17 we've gone around and said, unfortunately, you have to  
18 comply -- sections have to comply with this as much as any  
19 other entity.

20 So the short answer is no, we haven't set a  
21 different standard. We're just trying to find what would  
22 be reasonable work-around for section members. We haven't  
23 come up with any great solution yet.

24 MR. PASTERNAK: And I think ultimately the issue  
25 that needs to be addressed is whether or not there's a

1 reason why Bagley-Keene should be imposed on the sections.  
2 It's very clear it should be imposed on the Board because  
3 we should be open to the public, we should be transparent.  
4 And if somebody needs to give some consideration at some  
5 point as to the question of whether or not there's such a  
6 need for the sections in terms of what they're doing.

7 I'm not saying there's an answer one way or the  
8 other, but I'm not sure there's ever been any discussion  
9 of that issue.

10 Bagley-Keene, as you know well, Denny, was  
11 imposed on us in a matter of two or three days as a last  
12 minute amendment to our fee bill without any hearings at  
13 all.

14 So that question was never considered in the  
15 legislature and should be considered at some point, I  
16 think.

17 MS. HOLTON: Well, I think -- I think that's --  
18 but that's the answer: It has to be considered in the  
19 legislature so long as the organization exists as it does.  
20 There's nothing in the law that would exempt sections.  
21 They fall within the bodies covered by Bagley-Keene.

22 MR. SEGAL: If I may? I didn't want to  
23 interrupt.

24 MR. MANGERS: No, please go ahead. And then I'll  
25 follow-up with a question.

1           MR. SEGAL: Sure. I think you're actually making  
2 a point that I was trying to make, whether I made it  
3 badly, is that we don't know yet. And the idea is that we  
4 have the Q's. So we just got this document this week of  
5 the Q's. We don't have the A's.

6           I was just giving an example of information that  
7 I've seen that may or may not be accurate.

8           And so our task force on the counsel is simply to  
9 exam and be able to report to the Board when it's  
10 appropriate the effect that their rules are going to have  
11 on us. Because we're still examining that. And we still  
12 don't have all the answers.

13           So it's really -- we're more of a -- to be able  
14 to relay back what's happening in real-time, because as we  
15 know, you're proposing to possibly try to get the  
16 legislature to remove this requirement from the sections.  
17 But we don't know that either.

18           MS. HOLTON: We certainly entertain along with  
19 lots of other requests for exemptions from PRA and  
20 Bagley-Keene.

21           MR. SEGAL: Right.

22           MS. HOLTON: I mean, lest you think that we've --  
23 I haven't actually seen them. But lest you think we've  
24 actually given Q's and saying there's no A's --

25           MR. SEGAL: Oh, no, no.

1 MS. HOLTON: -- I think the effort was to make  
2 sure we were -- I'm guessing the effort, and Dina can say,  
3 is to make sure that we've covered -- we've listed all  
4 your questions, so we can make sure we know what they are,  
5 and we can undertake the answers.

6 MR. SEGAL: No, that's exactly it. Is that I'm  
7 saying it was provided to us to see if we wanted to add  
8 more questions. We've haven't gotten to the A's yet.  
9 That's not expected.

10 MR. MANGERS: Well, Mr. Chairman, my observation  
11 as a public member is that this is being framed  
12 improperly. And I think the rhetoric is improper. If I  
13 may just -- as I say, with all due respect.

14 Phrases like, "We're trying to make Bagley-Keene  
15 more comfortable for our sections," or rhetoric from  
16 General Counsel -- again, with all due respect -- that  
17 suggest, "We're trying to deal with this issue so that we  
18 can differentiate the impact of Bagley-Keene from Board to  
19 sections" has the appearance of looking like, "We just  
20 want to ensure the continuing support and participation of  
21 our sections within the existing paradigm, so much so that  
22 we're trying to find them some semblance of relief around  
23 allocation and some semblance of relief from  
24 Bagley-Keene." That is not what we should be doing.

25 The reason the legislature applied Bagley-Keene

1 to the whole organization is because of the conceit, if I  
2 may use a theatrical term, that this organization  
3 continues to pursue that it must somehow regulate itself  
4 in a unified fashion. And that all of the trade functions  
5 are so inextricably related with its regulatory function,  
6 that transparency through Bagley-Keene has to therefore be  
7 applied to the whole outfit, which of course is ludicrous,  
8 but only ludicrous if we were separated and it was imposed  
9 upon trade functions.

10           Bagley-Keene quite appropriately ought to be  
11 applied to the regulatory side. But to apply it to trade  
12 functions, this is only the beginning of what ultimately  
13 ought to be an internal revolt because it was never  
14 intended.

15           So I just want to counsel, since the public is  
16 watching, the legislature is watching carefully, to use  
17 rhetoric like "We're going to try to ameliorate concerns  
18 of our sections by finding some root" --

19           MS. MENDOZA: To work around.

20           MR. MANGERS: To work around what was obviously  
21 intended to apply to the whole -- we're the ones who say  
22 it: Every attorney involved in a unified Bar is a  
23 regulator, right? Because that's what this is.

24           MR. PASTERNAK: But Denny --

25           MR. MANGERS: This is this is a regulatory agency

1 in which you have combined the two functions. Therefore,  
2 as a regulator, there is not much difference.

3 MR. PASTERNAK: But Denny, this is not the time  
4 for a debate. I believe --

5 MR. MANGERS: The Governance Task Force is the  
6 form in which this very issue is supposed to be discussed.  
7 And since you don't allow it today --

8 MR. PASTERNAK: Denny --

9 MR. MANGERS: -- or at the Board meetings, let's  
10 make sure we're discussing it here.

11 MR. PASTERNAK: Denny, this is not a debate right  
12 now. We allowed the sections to speak today, even though  
13 it's not on the topic that we're addressing today, which  
14 is other Bar associations and other agencies.

15 We will have much more time to have this  
16 discussion in April.

17 But I believe you mischaracterized what was said.  
18 What was said was not that we're trying to avoid the  
19 imposition of Bagley-Keene. What's been said is that  
20 we're absolutely going to comply with Bagley-Keene as long  
21 as it's been imposed upon us.

22 But we're trying to comply in a manner that  
23 allows the Bar to continue operating to the extent that it  
24 serves the public interests.

25 MR. MANGERS: No, that's not what you're doing.

1 MR. PASTERNAK: Please don't interrupt me.

2 And second, I also don't believe there's any  
3 basis for you to say why the Legislature imposed  
4 Bagley-Keene. There hasn't been any hearing. We don't  
5 know why they imposed Bagley-Keene. It was imposed  
6 without any hearing at the last minute, as I stated,  
7 unless you're able to read the Legislature's mind.

8 So with that, we'll take a five-minute recess to  
9 give our court reporter a break before we hear from  
10 Victoria Henley.

11 MR. MANGERS: You're quite naiveté if you think  
12 the outcome of this Task Force ought to be go to the  
13 Legislature and ask them for relief from Bagley-Keene.  
14 You're on something.

15 MR. PASTERNAK: Thank you.

16 (A recess was taken from 1:43 p.m. to 1:55 p.m.)

17 MR. PASTERNAK: We will move on to Victoria  
18 Henley, who is the Director and Chief Counsel for the  
19 Commission on Judicial Performance, which, like the State  
20 Bar, is the only other regulatory agency within the  
21 judicial branch.

22 Victoria served as Director/Chief Counsel since  
23 1991, heads the agency and reports directly to the  
24 Commission. As I think everybody here knows, they oversee  
25 the discipline of judicial officers in California.

1 Victoria, welcome. Glad to have you here, and we  
2 look forward to your comments.

3 PRESENTATION BY MS. VICTORIA HENLEY:

4 MS. HENLEY: Well, thank you for inviting me. I  
5 am pleased to provide information about the Commission,  
6 its structure, answer any questions. Certainly any  
7 opinions I express are my own and are not those of the  
8 Commission.

9 And before I get started, I would like to take  
10 the opportunity and point out that the State Bar was  
11 instrumental in the establishment of the Commission on  
12 Judicial Performance, the first judicial disciplinary body  
13 in the United States. This involved a multi-year  
14 sustained effort by the Bar, joined by the Judicial  
15 Council for the Constitutional Amendment in 1960 that  
16 established the Commission.

17 Today there are disciplinary bodies in all 50  
18 states and in the District of Columbia, most of which were  
19 initially modeled after what was referred to as the  
20 "California Plan." So the State Bar deserves credit for  
21 its leadership in establishing an important mechanism for  
22 accountability to the public and public protection.

23 As President Pasternak noted, the Commission is a  
24 disciplinary body for state court judges. It has  
25 jurisdiction over all trial court judges, appellate and

1 Supreme Court justices. It shares jurisdiction with local  
2 courts for oversight of subordinate judicial officers. I  
3 am the Supreme Court's designated investigator for  
4 complaints involving State Bar court judges.

5 In addition to the Commission's disciplinary  
6 responsibilities, it also handles judge's applications for  
7 disability retirement.

8 The Commission is an Article 6 agency, but it is  
9 independent of the courts and of the Judicial Council. It  
10 is funded by the general fund; however, it has its own  
11 line item in the budget. Presently, the Commission's  
12 budget is roughly about 4.3 million a year in 2003. And,  
13 again, in 2008 and '9, the Commission's budget was reduced  
14 by 10%, which has not yet been replenished.

15 The Commission receives approximately 1200  
16 complaints a year. It has a staff of 22 to assist in the  
17 initial evaluation of complaints, investigations and  
18 prosecuting the cases that go to formal charges. The  
19 current staffing level represents a reduction in staffing  
20 of almost 25%, due to the reduction to the Commission's  
21 budget.

22 Unlike the State Bar system, the Commission on  
23 Judicial Performance is a unitary system responsible for  
24 the initial investigation of complaints, as well as the  
25 ultimate adjudication of the disciplinary proceedings. In

1 the middle of that process, however, evidentiary hearings  
2 are handled by three special masters, three judges, who  
3 are appointed by the Supreme Court who provide a report to  
4 the commission with proposed findings of fact and  
5 conclusions of law.

6           Somewhat akin to the shift towards the use of  
7 professional judges on the State Bar court, the Supreme  
8 Court stopped randomly selecting judges to preside over  
9 commission hearings a number of years ago. And it  
10 established a pool of judges and justices who are selected  
11 and specifically trained to handle judicial disciplinary  
12 hearings.

13           All Commission sanctions are subject to review by  
14 the Supreme Court on petition by the sanctioned judge.  
15 Review is discretionary, but review proceedings involving  
16 Commission determinations are somewhat unique in that the  
17 parties are required to brief both the question of whether  
18 the Court should grant review and the merits of any issues  
19 raised by the petitioner before the Court decides whether  
20 to grant review or not.

21           So in other words, in every instance where  
22 there's a petition for review, the Court has full briefing  
23 before deciding whether to grant review.

24           The Commission pursuant to a constitutional  
25 amendment, Prop 190 in 1994, the Commission is also

1 responsible for promulgating rules for Commission  
2 proceedings. Prior to that time, the Judicial Council  
3 promulgated rules for Commission proceedings.

4           The Commission conducts a biennial rules review,  
5 but will also adopt rules between the reviews as needed.  
6 All proposed rules are circulated for public comment, and  
7 there's even a kind of rebuttal comment period.

8           The Commission today is comprised of 11 members  
9 who serve four-year terms. This includes three judges,  
10 two lawyers and six citizens. Members can serve up to two  
11 four-year terms or a total of ten years if filling a  
12 vacancy.

13           While half of the Commission's membership can  
14 turn over every two years, this has not usually been the  
15 case. Many members have served eight to ten years. The  
16 Chair of the Commission is elected annually by the  
17 members. There is no limit to the number of years a  
18 member can serve as Chair. Recently, most chairs have  
19 served for two years.

20           The scale of the Commission's disciplinary  
21 responsibilities are not comparable to those of the State  
22 Bar, which has at least 100 times as many individuals  
23 under its purview, and has more than ten times as many  
24 complaints to be resolved each year.

25           Discipline is only one of many of the State Bar's

1 activities overseen by the Board of Trustees which must  
2 present considerable challenges for a Board comprised of  
3 members who traditionally serve only three-year terms with  
4 the leadership of the Board changing annually.

5           When the Commission was first established, the  
6 majority of its members were judges, as it was believed  
7 important that judges be responsible for passing judgment  
8 on their own. After 35 years, the membership was changed  
9 dramatically with the passage of Proposition 190 in 1994.  
10 With 64% voter approval of the Constitutional Amendment,  
11 it's fair to say that the public had lost confidence in  
12 the judicial discipline system. It was almost totally  
13 confidential, and it was governed by a majority of judges.

14           Proposition 190 had made at least a dozen  
15 significant changes to the judicial disciplinary system.

16           Without anticipating the outcome of any antitrust  
17 challenges to mandatory Bar associations or the benefits  
18 of ^ deunification, I would like to voice support for the  
19 State Bar maximizing the participation of nonlawyers  
20 however it can.

21           The services of an attorney are not affordable to  
22 a large segment of our society, which in my view threatens  
23 public confidence in our court system and public respect  
24 for the importance of a system of laws and the rule of  
25 law.

1           We may also be seeing a shift in expectations  
2 about the delivery of legal services with increased  
3 influence of the Internet on consumers and changes in the  
4 delivery of services by other professionals.

5           Discussions about expanding access to legal  
6 services, providing alternatives to an attorney and  
7 changing delivery of legal services should include not  
8 just providers, but clients and consumers.

9           The participation of nonlawyers in fee  
10 arbitration panels is one example in my opinion where  
11 public participation has given a process greater  
12 credibility with the public.

13           In my opinion, some of the ethics issues facing  
14 attorneys today should be considered with greater public  
15 input. One example, the discussion of conflicts of  
16 interest; the needs of multinational law practices;  
17 perspective conflict waivers could be very different from  
18 a client's perspective than the lawyers. The rules that  
19 resolve these issues should be formulated with active  
20 consideration of both points of views.

21           I'm happy to answer any questions.

22           MR. PASTERNAK: Victoria, thank you.

23           Questions? Denny.

24           MR. MANGERS: Thank you for being here. It's  
25 always been a pleasure on the occasion when we have dinner

1 with you and your colleagues, and we learn a great deal  
2 from those sessions about what you face in relationship to  
3 what the Bar does.

4           Were you around when the big change occurred as a  
5 result of the proposition?

6           MS. HENLEY: I was. I started with the  
7 commission actually in October of 1990. I took over as  
8 Chief Counsel in January of 1991. Proposition 190 was on  
9 the ballot in November of 1994.

10           MR. MANGERS: So describe a little bit more about  
11 the environment in which, as you said, the public appeared  
12 to have lost confidence in judges' ability to regulate  
13 themselves, and thus through a public initiative the  
14 change occurred.

15           MS. HENLEY: Right.

16           MR. MANGERS: What were the manifestations of the  
17 loss of public confidence? And then I have one more  
18 question.

19           MS. HENLEY: Well, I think the -- it was a  
20 combination of things. I think there was no question that  
21 the extensive confidentiality in Commission proceedings,  
22 combined with the perception that this was a majority of  
23 judges making decisions that were not subject to public  
24 scrutiny, you know, raised doubts.

25           There were a series of newspaper articles

1 challenging how the Commission was structured, various --  
2 the outcome of various decisions, some of which, because  
3 they were confidential, it was not possible to provide  
4 necessarily even accurate information about what had  
5 transpired.

6           There had been between 19 -- there was a big push  
7 for open hearings for the Commission in 1998. And, in  
8 fact, the first legislative constitutional amendment  
9 required that there be all open hearings. A compromise  
10 was reached and the commission was granted the authority  
11 to have open hearings -- order open hearings in cases that  
12 involved moral turpitude, corruption or dishonesty. Every  
13 effort by the Commission to open a hearing between 1988  
14 and the passage of Proposition 190 in 1994 was thwarted in  
15 the courts, and ended up in confidential proceedings  
16 before the Supreme Court that were not resolved until  
17 three or four days before the election.

18           The Supreme Court upheld the Commission's right  
19 to have public hearings. It's fair to say that I think  
20 the ship had sailed by then.

21           MR. MANGERS: Did the Supreme Court at the time  
22 oppose the effort to change the manner in which judges  
23 were regulated? Did it weigh in on the issue?

24           MS. HENLEY: I don't believe the Court generally  
25 weighs in on issues, particularly things that could

1 potentially come before the Court. The Judicial Council  
2 may have taken positions as to certain aspects of  
3 Proposition 190, but I'm not sure.

4 MR. MANGERS: You're not here, nor am I, for me  
5 to put you in a position of having to opine something  
6 outside your own wheelhouse.

7 But you can tell from the tenor of my comments  
8 and observations that I'm struggling to deal with why  
9 there ought to be a difference between insurance --  
10 licensed insurance brokers and attorneys. But I'm even  
11 more interested in why if judges who are attorneys, now  
12 have a separate trade association and a separate  
13 regulatory function -- they had to be forced to do it, but  
14 nonetheless they have them -- it appears to me it's  
15 operating well. But I'm having trouble differentiating  
16 why the Bar and its attorneys should be operating in a  
17 different paradigm than the judges who have the separation  
18 and things seem to be going swimmingly? Can you help with  
19 that?

20 MS. HENLEY: Well, I can't. I mean, I think all  
21 states are unique. I mean, initially when almost all  
22 commissions -- Judicial Disciplinary Commissions were  
23 established, they probably were a majority of judges.

24 Today I think it's a minority of jurisdictions in  
25 which judges are the majority on the disciplinary

1 commissions. You know, that's a shift over time and often  
2 has to do with different circumstances and things that  
3 occur in different states.

4 MR. MANGERS: Oh. So what you're saying then is  
5 that nationwide there's a tendency for judges'  
6 disciplinary functions to have a predominance of public  
7 members or at least a more equitable distribution --

8 MS. HENLEY: Correct.

9 MR. MANGERS: -- but more universally on the  
10 attorney's side, it's still there are many more attorneys  
11 in ratio to public members; is that your observation?

12 MS. HENLEY: You know, it kind of depends  
13 everywhere. But I think certainly you've seen a shift  
14 from there being a majority of judges to there being --  
15 and sometimes it's: Three, three, three. Three lawyers,  
16 three judges, three public members. I mean, it's done  
17 differently in all sorts of states. It's just it's  
18 moved -- shifted from the original model, which was a  
19 majority of judges.

20 In the same way there has been a shift from  
21 having totally confidential proceedings to now a majority  
22 of states open the proceedings at the time when formal  
23 charges are filed.

24 MR. MANGERS: And one last question: Given the  
25 very different configuration of your commission, is it

1 common that your professional members and your public  
2 members are in open disagreement to the extent that very  
3 frequently public members are outvoted, or in practice  
4 does it end up that all tend to generally come into  
5 consensus around disciplinary issues?

6 MS. HENLEY: That depends.

7 MR. MANGERS: Of course it does. I mean --

8 MS. HENLEY: And in all public cases, the  
9 commission does give its vote breakdown in any way matter.  
10 When it closes matters or issues confidential discipline,  
11 that information is now furnished also to the judge with  
12 the breakdown of voting.

13 And I just looked over the years to look at the  
14 number of times when they were in the old days petitions  
15 to the Supreme Court for discipline, because it used to be  
16 the Supreme Court which imposed discipline. Today, the  
17 commission imposes all sanctions subject to review.

18 But it often was not unanimous. But you do not  
19 typically see a breakdown all of the public members one  
20 way and the judges more. It's usually a different mix.

21 MR. MANGERS: So rarely does that occur?

22 MS. HENLEY: Rarely.

23 MR. MANGERS: Thank you so much.

24 And thank you, Mr. Chair.

25 MR. PASTERNAK: Victoria, let me ask you a

1 question. You're familiar with the California Judges  
2 Association, right?

3 MS. HENLEY: I am indeed.

4 MR. PASTERNAK: And that would be the entity that  
5 would be comparable to a voluntary statewide Bar  
6 Association, isn't it, not the Judicial Council?

7 MS. HENLEY: Correct, yeah. They are voluntary,  
8 right.

9 MR. PASTERNAK: And their membership has been  
10 shrinking; isn't that accurate?

11 MS. HENLEY: I don't know whether it has been  
12 shrinking. The last thing I had read, I thought they said  
13 things had kind of held firm. I know for years the  
14 courts, I think, used to help contribute to membership  
15 fees, but I don't think they do any longer; so that may  
16 have affected the membership.

17 MR. PASTERNAK: Thank you. Any other questions?  
18 Jason?

19 MR. LEE: Victoria, thanks for your remarks.  
20 You've come before the Commission on Judicial Nominees'  
21 Evaluation, and I always appreciated the input that you  
22 had for us related to what makes good judges.

23 I recall from the presentations that you did that  
24 you would sort of highlight the problem areas that judges  
25 had -- or would run into in the course of their

1 performance on the bench.

2           In thinking about how that information is  
3 translated to a -- since it's a separate regulatory  
4 function in a sort of professional organization like the  
5 California Judicial Association, is information conveyed  
6 from the CJP to judges who could then learn from those  
7 mistakes the sort of cases that you're seeing?

8           MS. HENLEY: Right. Every year the Commission  
9 produces an annual report, which goes -- it's distributed  
10 to every judge and court commissioner, as well as numerous  
11 other individuals and bodies throughout the state, which  
12 contains a description of every public discipline case,  
13 and it also contains write-ups of each of the private  
14 discipline cases but done anonymously.

15           But again, largely for an educational purpose,  
16 and so that the public knows what kinds of conduct is  
17 being treated confidentially as compared to publicly.

18           Every year in the annual report we also do kind  
19 of a frequency rating of the amount of discipline that was  
20 imposed for different kinds of conduct, so that judges and  
21 others can look at it and say -- for example, judicial  
22 educators can look at it and say, "Gosh, maybe we need to  
23 work more on this or another aspect."

24           And the Commission does work and provide input  
25 both in the qualifying ethics training programs for

1 judges, which they're required to do every third year. We  
2 go to every new judge orientation.

3           And whenever -- there's times that the Commission  
4 has written and said, "We're seeing these types of  
5 problems with new judges, and perhaps this need to be  
6 included with the judicial college."

7           So the Commission does what it can -- I think  
8 we're one of the biggest submitters of questions for the  
9 Supreme Court's Committee on Judicial Ethics opinions to  
10 resolve. The Commission regularly sends things it thinks  
11 needs to be resolved in an ethics opinion to that  
12 committee.

13           MS. MEYERS: David?

14           MR. PASTERNAK: Yes, Danette?

15           MS. MEYERS: Thanks.

16           It's good to see you again, Victoria.

17           MS. HENLEY: Nice to see you.

18           MS. MEYERS: Just a couple of questions. And I  
19 think at the last dinner you and I talked about this, and  
20 so I maybe wanted to talk a little bit about this.

21           And it comes to mind because in Los Angeles we're  
22 going through contested elections this year, much to my  
23 surprise and in my courtroom, and much to my surprise in  
24 my courthouse there is one.

25           But is there a difference between the number of

1 complaints that you get vis-à-vis those judges who are  
2 appointed by the governor as opposed to those that  
3 actually run for office? That's my first question.

4           And then my second question is: Does your  
5 commission require judges to take what we call MCLE, but  
6 some type of continuing legal education? And if so, do  
7 you monitor it? And if it isn't completed by the judge,  
8 is there some type of discipline that goes on?

9           MS. HENLEY: California does not have mandatory  
10 judicial education requirements for its judges. Except  
11 for judges, there are certain requirements; for example, a  
12 judge who is changing to a new primary concentration, for  
13 example, if you're going from being a judge in criminal  
14 law and you're going to the family law assignment, for  
15 certain assignments you are required to go education.  
16 That's not reported to us.

17           Certainly if the Commission received a complaint  
18 that someone had failed to do that, the Commission would  
19 look into it. But there's no automatic review of this,  
20 you know, by the Commission.

21           As far as the elected appointed issue, that is  
22 the second highest correlative factor related to  
23 discipline for judges in California, the first being size  
24 of court. Judges who come from smaller courts have a  
25 higher incidents of discipline than their counterparts.

1           But the second one is elected appointed. And  
2 that has been true, I think, since the inception of the  
3 Commission. It has certainly borne out in the ten-year  
4 study we did and then in the 20-year study. It remained a  
5 very, very high factor in discipline, which again to the  
6 work of the Jenny commission, you know, it continues  
7 serves an important function in terms of -- at least it  
8 has an impact on the selection of ethical judges and the  
9 appointment ethical judges.

10           MS. PARKER: I want to make sure I understood the  
11 answer to your question.

12           You said that the correlation is with greater  
13 discipline from larger courts or smaller?

14           MS. HENLEY: No, smaller courts.

15           MS. PARKER: Smaller courts.

16           MS. HENLEY: Yes.

17           MS. PARKER: And then I think Denny asked a  
18 question that I don't think you answered, and that is:  
19 Why would we treat lawyers differently than we do judges  
20 in terms of having what I'll call a unified structure with  
21 both association and disciplinary functions combined?

22           MS. HENLEY: Well -- and I don't know. For  
23 example -- and what's hard is the Commission does not have  
24 functions such as education, you know, all of the aspects  
25 of the functions that the Bar does have; admissions, for

1 example. The Commission's sole charge is really  
2 discipline.

3 I know in the State Bar court there did in the  
4 past used to be some nonlawyer judge members of the State  
5 Bar Court. There was a shift away from that. I think the  
6 increased professionalism of the State Bar Court has  
7 probably enhanced its credibility. I don't think it had  
8 the same, you know, issues that have -- I mean, their  
9 decisions are public. Everybody can review the decisions.  
10 All of the cases that go to them are either dismissed or  
11 there's an outcome. I don't think they were really  
12 plagued with the same issues that confronted the  
13 Commission in a highly confidential system, trying to have  
14 the public understand, you know, what the Commission did  
15 or did not do.

16 MR. PASTERNAK: Victoria, does the Commission do  
17 things like have an Ethics Hotline, have a Substance Abuse  
18 Program for the judges, any of those things, or strictly  
19 discipline?

20 MS. HENLEY: None of that. Most of that is  
21 done -- the Ethics Hotline is done by the California  
22 Judges Association and by the Supreme Court's Committee on  
23 Judicial Ethics Opinions. The Commission is starting a  
24 program -- they're trying to have a mentoring program  
25 since judicial demeanor is one of the most common grounds

1 for discipline. The Commission is doing a pilot program  
2 to try to set up judges who have repeated problems with  
3 demeanor with mentor judges who could hopefully provide  
4 better results than elevating discipline appears to do.

5 MR. PASTERNAK: Thank you.

6 Joanna?

7 MS. MENDOZA: I have hopefully a quick question.  
8 I wanted to know how the Commission members are selected  
9 and how do they select the Chair for the Commission.

10 MS. HENLEY: The members vote the Chair each  
11 year, and the judge members -- and this is all pursuant to  
12 the Constitution. The judge members of the Commission are  
13 appointed by the California Supreme Court. One must be an  
14 appellate court justice, and the other two are trial court  
15 judges. The two lawyer members of the Commission are  
16 appointed by the Governor. The Governor also appoints two  
17 of the citizen members. And then the Senate Rules  
18 Committee and Speaker of the Assembly each have two public  
19 member appointments.

20 MR. PASTERNAK: Gwen?

21 MS. MOORE: I was just going to ask you: How  
22 does Bagley-Keene fit into the Judicial Council?

23 MS. HENLEY: The commission is exempt from both  
24 Bagley-Keene and the Public Records Act.

25 MS. MOORE: Thank you.

1 MR. PASTERNAK: Any other questions?

2 Thank you very much, Victoria. It's nice to see  
3 you again. Hopefully we'll be able to schedule our annual  
4 dinner as well.

5 MS. HENLEY: Thank you very much.

6 MR. PASTERNAK: We're going to move on because  
7 I've heard some members need to leave perhaps a little bit  
8 early to catch planes.

9 And so we have our final guest today, George  
10 Brown. George is the Executive Director of the State Bar  
11 of Wisconsin, which has 24,000 members. He's been their  
12 Executive Director since 2000. 1986 to 1997 he was the  
13 State Bar of Wisconsin's Public Affairs Director serving  
14 as its chief lobbyist and Public Relations Director.

15 So George, welcome. Glad to have you with us.

16 PRESENTATION BY MR. GEORGE BROWN:

17 MR. BROWN: Thank you, President Pasternak. As a  
18 lobbyist, you always leave something behind, so I'll refer  
19 to these periodically.

20 Given the hour, I will --

21 MS. PARKER: George, before you begin, I just  
22 want to say, We'll correct Paula when she says a fine  
23 executive director needs to be a lawyer. You are not.

24 MR. BROWN: I think an executive director  
25 responsible for discipline, I think, does need to be a

1 lawyer.

2           Given the lateness of the hour, I will keep my  
3 remarks to three-and-a-half hours.

4           The State Bar of Wisconsin is a mandatory  
5 membership organization. We do have about 25,000 members.  
6 We have 7,000 lawyers who live and work outside of  
7 Wisconsin; about 600 actually here in California. We are  
8 a mandatory membership organization at the requirement of  
9 the Supreme Court. SCR Chapter 10 is the body of the  
10 Supreme Court rules that govern us. There are also State  
11 Bar bylaws. The Supreme Court has active authority over  
12 the rules and they have passive review over the bylaws,  
13 which means if we pass a bylaw at the Board level, they  
14 can or cannot hold a hearing and make a decision. If they  
15 don't make a decision within 60 days, it automatically  
16 goes into effect.

17           We have a budget of \$12 million. 65% of that  
18 money is nondues income. We earn it on the open  
19 marketplace. Examples of that are in your folder on the  
20 left-hand side. You'll see a brochure for a national  
21 conference we're putting on, as well as a book of catalog  
22 of the various publications that we have. We put on about  
23 75 distinct CLE programs a year with obviously video  
24 replay, et cetera, so there's about 600 presentations a  
25 year, and we publish or revise about 60 volumes a year on

1 Wisconsin law. Most of it deals with basically practice  
2 tips and those sorts of things.

3           We have 24 sections, which are essentially  
4 voluntary organizations within the organization, and then  
5 we also have 28 committees. The sections are self-funding  
6 both in terms of their administrative costs, any of their  
7 direct program costs, as well as if -- and then if they  
8 are a lobbying section, they also have to charge a  
9 separate lobbying fee for that.

10           Our sections can take public policy positions  
11 independent of the Board of Governors, as long as the  
12 Board of Governors does not have a position in opposition  
13 or even in similarity to it. They have to take positions  
14 within their purview. So for example, the Environmental  
15 Law Section cannot speak to family law. They have to stay  
16 within the purview of environmental law.

17           This can cause conflicts in the legislature. We  
18 have a very active lobbying program. This can cause  
19 conflicts in the legislature, so we have a dispute  
20 resolution process that's managed by volunteers as well.  
21 It's a separate committee that's in our bylaws.

22           And we also obviously are subject to Keller as a  
23 mandatory membership organization, but we treat Keller  
24 very differently than most organizations. Many  
25 organizations pass -- their Boards pass policy saying they

1 will not doing anything outside of Keller or they can't do  
2 certain types of lobbying. We lobby on whatever we want.  
3 And actually there's a form in there, I think it's the  
4 second one on the right-hand side, that shows you what we  
5 tell our members what we've been doing that we believe  
6 falls outside the bounds of Keller.

7           That doesn't mean we get involved in anything and  
8 everything. There are what I called third-rail political  
9 issues you just stay away from. Some of them are what  
10 spawned the Keller case; nuclear free zones, abortion, gun  
11 control. Those are just third-rail politics where you're  
12 going to make half your membership angry, no matter what  
13 position you take. All we have to do is look at the ABA  
14 and the loss of ABA membership when they got involved in  
15 the abortion debate and then switched sides twice, and  
16 just a dramatic loss in membership. So you just stay away  
17 from those sorts of things.

18           I've been asked to give you kind of a background  
19 on the creation of the unified Bars. Really if you think  
20 about it, the unified Bars are an outgrowth of the  
21 Progressive Era. There's a book by a historian named  
22 Robert Wiebe called "The Search for Order" from 1877 to  
23 1920. It talks, among other things, the rise of  
24 associations, but particularly the rise of mandatory  
25 associations began in the late 1890's. I think 1899 was

1 when North Dakota was first made mandatory.

2           We're a relative late comer in Wisconsin. We're  
3 made mandatory by our Supreme Court in 1956 on a trial  
4 basis; made permanent in 1958. Interestingly in 1943 our  
5 state legislature passed a law requiring mandatory  
6 membership in the State Bar of Wisconsin -- what was then  
7 the Wisconsin Bar Association. Our Supreme Court said  
8 that that was an unconstitutional law, because under the  
9 Wisconsin Constitution it is their responsibility -- they  
10 have the responsibility for managing the courts, and  
11 lawyers are officers of the Court so, therefore, they  
12 declared the law unconstitutional. It was a decade later  
13 before that law became -- or those rules were passed by  
14 the Supreme Court.

15           We were the first State Bar challenged as a  
16 mandatory Bar within two years, and the case went up to  
17 the U.S. Supreme Court. It's called -- I just blanked on  
18 it. Lathrop versus Donohue. Trayton Lathrop was an  
19 attorney in Madison. Joe Donohue was the treasurer. He  
20 sued over his dues. And at that point the U.S. Supreme  
21 Court opined for the first time that a mandatory  
22 membership organization for lawyer was in fact  
23 constitutional.

24           We have been challenged many, many, many times  
25 since then, and I can list those cases if you'd like.

1 Most recently -- and usually by the same person. After  
2 Lathrop vs. Donohue there's about a 20-year hiatus, and  
3 then an individual named Steve Levine sued us, and then  
4 sued us again, and then represented the people who sued  
5 us, and now recently sued us again, and now is threatening  
6 to sue us yet again. He also has arbitrated -- requested  
7 arbitration under Keller approximately six different  
8 times.

9 I brought this along in case you wanted this as a  
10 history of the integrated Bar in Wisconsin from 1943 to  
11 1997. It's all the case law, all the arbitration  
12 decisions. You're welcome to enjoy it.

13 There are 33 mandatory Bar Associations across  
14 the country. There are 21 voluntary Bar Associations on a  
15 statewide basis. You'll notice that's more than 50.  
16 That's because one, we include the District of Columbia,  
17 which is a mandatory membership organization, and there  
18 are three states that have voluntary Bar Associations and  
19 mandatory membership organizations.

20 North Carolina, Virginia and West Virginia all  
21 have a mandatory Bar Association that is -- essentially  
22 functions much like a law society does. They do all the  
23 discipline, they do the admissions. The voluntary Bar  
24 does the trade association work in those states. And the  
25 quality of those programs and the success of those

1 programs varies dramatically.

2           North Carolina has a very active, very high  
3 populated membership of North Carolina Bars in their  
4 voluntary association. West Virginia less so and Virginia  
5 far less so. So that varies dramatically.

6           Hawaii is the most recent Bar Association to  
7 become mandatory. That was in 1989. And since then  
8 nobody has become mandatory, and nobody technically has  
9 gone voluntary, although we had a period, which is often  
10 referred to as the "voluntary period." And then you have  
11 the special case currently that Nebraska is facing, which  
12 is, in my mind, an untenable position.

13           In 1986 Mr. Levine in a case called Levine versus  
14 Heffernan sued us over our rebate process for dues for  
15 doing political activity. The District Court, District  
16 Federal Court, took that opportunity to declare the  
17 mandatory Bar unconstitutional. We appealed that to the  
18 Seventh Circuit. And pending the resolution of those  
19 appeals, it did go up to the U.S. Supreme Court. Our  
20 Supreme Court said -- they didn't make us voluntary -- we  
21 refer to it as our voluntary period, but they made us --  
22 they simply stopped enforcement of the mandatory  
23 membership rule. And I'll go into some detail there.

24           We were in that situation until 1992 when at --  
25 and actually, the Levine case went up at the same time

1 that the Keller case went up. Levine was denied cert.  
2 Keller was granted. Quite frankly, I think that if  
3 Levine had been granted cert., we wouldn't be being sued  
4 by Mr. Levine any longer, because one of his goals is to  
5 argue a case before the U.S. Supreme Court before he dies.  
6 So it's kind of a double-edged opportunity for him.

7           And so the -- as I said, Mr. Levine drives me  
8 crazy. I just read an e-mail where he's going to sue us  
9 again because he lost the arbitration that he was involved  
10 in.

11           There is one mandatory county Bar, believe it or  
12 not. North Carolina many years ago gave the opportunity  
13 to their county Bars to become mandatory, and one of them  
14 did, Mecklenburg, which is around Charlottesville, is a  
15 mandatory county Bar. It's the only one in the country.

16           Nebraska is a different situation. They were  
17 kind of in the same situation we were in the sense that  
18 we're there now in the same situation we were during our  
19 interim period, and that is that they had a case -- they  
20 had -- I believe it was a Nebraska senator who didn't like  
21 something that they were doing in the legislature. I  
22 think he was proposing that Nebraska could nullify any  
23 federal law it wished. I thought that was settled during  
24 the Civil War. And so the State Bar opposed it. He  
25 brought an action against them, before the Nebraska

1 Supreme Court. The Nebraska Supreme Court, they made  
2 some, I think, arguments that were problematic in that,  
3 first of all, they could not prove that they were not  
4 violating Keller because they kept no records. They  
5 simply said they weren't doing it. My argument always  
6 when people do that is to say, "Prove it." We can.

7           And then secondly, they made the argument that  
8 the process that Wisconsin went through was too onerous  
9 and they shouldn't have to do that. The result was the  
10 Court said, "Well, you're still a mandatory membership  
11 organization, but nobody has to pay dues."

12           And so they have all the responsibilities of a  
13 mandatory membership organization, but they have none of  
14 the -- not nearly the amount of money. That's an  
15 untenable situation. It's very similar to the situation  
16 that we were in from 1988 to 1992. And again I'll get  
17 into some details in a second. But if that situation were  
18 presented to us, I have told my leadership that I will  
19 simply argue to them that we should say to the Supreme  
20 Court, "Here's your mandatory Bar. Thank you very much.  
21 We're going to go voluntary."

22           Puerto Rico is another situation you may have  
23 heard of. It recently went voluntary. But that's a very  
24 special case. Because in Puerto Rico the mandatory Bar  
25 people and the voluntary Bar people have aligned

1 themselves with the political parties that favor or oppose  
2 statehood. And so when one comes into power, they're  
3 mandatory and when the other comes into power they're  
4 voluntary. So that's a gigantic political mistake on  
5 their part.

6           There are a number of models of Bar associations  
7 around the country. You've heard of some of them. You  
8 have one. There's the law society models as I've talked  
9 about a little bit. The law societies that were talked  
10 about really are Canadian, England and Wales and Scotland.  
11 And Canada in particular where there's a separate body  
12 that's anointed, if you will, by government that says  
13 "You're going to do all the disciplinary work." And then  
14 there's a voluntary Bar Association. All the way to  
15 organizations like ours where we are very deeply involved  
16 with the Supreme Court, and we're very deeply involved  
17 with providing administrative and other support to the  
18 Court, but we do not do discipline and we do not do CLE or  
19 admissions. We provide CLE, but we do not do  
20 certification for CLE.

21           There are other models out there. Kentucky is a  
22 voluntary membership organization that does do discipline.  
23 They're Board of Governors actually reviews the cases.  
24 They are brought to them by their Ethics Committee. Their  
25 Ethics Committee makes the presentation to the Board. The

1 Board of Governors essentially serves as a charging body,  
2 and then it goes to the Supreme Court for final  
3 disposition.

4           They ran into a bit of a buzz saw a couple of  
5 years ago where their incoming president was under  
6 investigation, and she simply -- by the Ethics Committee,  
7 and when she became the president-elect, she just  
8 unappointed all the Ethics Committee and appointed her  
9 friends and suddenly her problem went away. So it's a bit  
10 of a challenge.

11           In Wisconsin, as I said, we do not do discipline.  
12 There are two separate agencies. And I believe the third  
13 sheet in your packet shows a chart of the Supreme Court.  
14 There are two separate agencies that do discipline. They  
15 are agencies of the Supreme Court. They are the Office of  
16 Lawyer Regulation, which does discipline, and the Board of  
17 Bar Examiner, which does admissions and does CLE  
18 evaluations.

19           We collect the dues and assessments. Our dues  
20 are \$254. The assessments total up to the remainder of  
21 the \$490 that lawyers pay for that. There's a \$50  
22 mandatory fee for civil legal services for the poor.  
23 There's a \$20 fee for our client protection fund, which we  
24 manage, by the way. And we under Supreme Court Rule  
25 Chapter 12, which is a chapter separate from us, we manage

1 not only those dollars, but we also staff the committees  
2 the committee that does the evaluations.

3           And then there is the Board of Bar Examiner fee,  
4 which is about 12 or \$13, and the remainder of those  
5 dollars go to the Office of Lawyer Regulation for  
6 discipline.

7           We have a lot of authority under the Court in the  
8 sense of if you do not pay your dues, if you do not sign  
9 your trust account statement, we suspend you. And once  
10 you're suspended, if you've not cleared that suspension up  
11 by the time you're required to report your mandatory CLE  
12 requirements, you do not get the form from the Board of  
13 Bar examiners, which means you probably won't fill out the  
14 form because you don't realize it's your year to do  
15 that, and therefore you get suspended for CLE as a result.

16           Oftentimes what we've found is individuals,  
17 particularly nonresident lawyers who are inactive and  
18 decide to -- they no longer want to be a member of the  
19 Bar, they do not resign, they stop paying their dues,  
20 which means that they're suspended, and we've had  
21 instances -- we had one instance a couple of years ago  
22 where there was an individual in Washington D.C. who was a  
23 member of the D.C. Bar, who wanted to become a member of  
24 Maryland Bar who found -- and they wouldn't admit him  
25 because he was suspended from Wisconsin. He had to make

1 up 300 CLE credits and pay several thousand dollars in  
2 fines because he had been suspended for 12 years before he  
3 could become a Maryland lawyer.

4           When we were voluntary it had a pretty tremendous  
5 impact on the organization. I joined the Bar staff in  
6 1986, and I was stunned at how little member outreach  
7 there was, because as a mandatory organization they were  
8 afraid to spend the members' money. They weren't afraid  
9 to get to a five-star resort for the Board meetings, but  
10 they were afraid to spend the members' money, so they  
11 didn't want to tell them what they were getting as  
12 benefits.

13           I asked them for the member benefit brochure and  
14 they kind of dug around and found one that had been  
15 printed about 15 years earlier that was not distributed  
16 any longer. I had to spend three meetings of our  
17 Communications Committee to convince them to put a picture  
18 of the Bar center in the new brochure that I was  
19 requesting from them as they're Public Affairs Director.

20           When we went -- and my argument was, "We need to  
21 acting like we're a voluntary membership organization,  
22 even though we're a mandatory membership organization."  
23 The result of going voluntary in 1988 was a complete  
24 change in attitude, and it forced the leadership to act  
25 like a voluntary Bar Association. And so there was much

1 greater outreach to the membership. There was a law  
2 school outreach program. There was a lot of other  
3 activities that we were engaged in along those lines. So  
4 it's a very different mindset.

5           The impact of being voluntary. We lost about 8%  
6 of our membership right away. The folks that we lost were  
7 government lawyers, the folks that we lost were  
8 nonresident lawyers, and especially nonresident lawyers  
9 who had been inactive, and we lost corporation counsel.  
10 Those were the three major groups we lost. We did,  
11 however, retain a lot of the practicing lawyers, for one I  
12 think -- well, for two reasons.

13           One is they wanted to be members. We had one  
14 instance, for example, when we went voluntary we did the  
15 wrapped -- wrapped a monthly magazine saying, "This is  
16 your last issue," you know. There was a postal delivery  
17 man who was telling people this lawyer had been suspended  
18 and lost his license because it was his last copy of the  
19 magazine.

20           But what we did was we simply structured our  
21 products and services so that if you bought one CLE  
22 seminar and bought one book and wanted the magazine, it  
23 was cheaper to be a lawyer, a member of the organization  
24 to get those, than it was to not be a member. And so  
25 there was an increased focus on benefits.

1           Over four years we ended up with about 88%  
2 membership, which is in contrast to the national average  
3 which is between 70 and 75% of the membership. And as  
4 it's been known, there's a wide range, but it also depends  
5 on how you define members, whether they're simply active  
6 lawyers or inactive lawyers, or in one state I'm aware of,  
7 they don't count government lawyers at all as potential  
8 members because they know they'll never join. So they  
9 could be 100% or 95%, they just don't count all the  
10 government lawyers as a potential membership pool.

11           One of the things I was asked to do was to  
12 comment upon some writings by Professor Ted Schneyer. I  
13 don't know if those were provided to you. Professor  
14 Schneyer, at the time he wrote his articles in the early  
15 '90's, was actually a professor of law at the University  
16 of Wisconsin Law School. He's now at Arizona. I believe  
17 he might even be an emeritus at this point. He's old  
18 enough certainly. Saying that the voluntary Bar can  
19 better serve the needs of the lawyers that a mandatory Bar  
20 can. I'm not so sure about that. If you read, and I'll  
21 be happy to read it to you, if you read the reasons behind  
22 the Wisconsin Supreme Court declaring a mandatory Bar, it  
23 had to do with the fact that the lawyers were not engaged.  
24 That there were too many lawyers not engaged in the higher  
25 calling of the profession. That they had basically

1 treated it like a business, and that it was the  
2 responsibility of all lawyers to educate the public about  
3 the practice. To make sure that other lawyers were taking  
4 care of the ethical responsibilities of the practice, and  
5 the only way to do that was under a mandatory membership  
6 organization.

7 Bar membership, as I was told by the now deceased  
8 original Executive Director, they projected that they  
9 would end up with about 4- to 5,000 lawyers, because  
10 nobody had a list of who all the lawyers were. They ended  
11 up with over 7,000. So they vastly underestimated the  
12 number of lawyers practicing in Wisconsin.

13 I think Schneyer's -- like I said, Schneyer's  
14 comments were directly contradicted by what the Wisconsin  
15 Supreme Court said.

16 One of the advantages of a voluntary Bar  
17 Association is that lawyers make a buying decision. As a  
18 mandatory membership organization, it's a -- as Paula was  
19 talking about, it's an assessment, it's a cost, it's a  
20 tax, if you will.

21 Under a voluntary membership organization,  
22 they're making a buying decision. And my personal  
23 experience is that lawyers who do not realize they're  
24 making a buying decision do not have a good understanding  
25 of what the Bar Association can provide them. And in

1 fact, we have found through membership research that there  
2 is a high correlation between members who support a  
3 mandatory Bar Association and perception of value that the  
4 Bar Association brings. If they tend to not want a  
5 mandatory Bar or if they do not support a mandatory Bar,  
6 those same products and services and features of the  
7 organization are seen by us as less valuable.

8           Now, we don't go out and say, "Well you're a  
9 voluntary Bar, you prefer the voluntary Bar, so we're  
10 going to give you less." It has to do with perception of  
11 value and, therefore, the perception of commitment to the  
12 organization as well.

13           Lobbying under -- and leadership under a  
14 voluntary Bar will be very different. All I have to do is  
15 look at the Realtors Association, for example. They have  
16 designated seats on their board for their large real  
17 estate firms, because they want to make sure they get 100%  
18 membership. They're lobbying strictly as a trade  
19 association, whereas a mandatory organization we lobby --  
20 and I said we lobby extensively -- we have been active on  
21 as many as 200 pieces of legislation.

22           We lobby extensively, but most of our lobbying  
23 resolves around making the law better. It's not -- very  
24 little of it is trade association; you know, sales tax on  
25 legal services, those sorts of things. It really revolves

1 around making the law better and saying, "Well, if you  
2 want to do it that way -- you want to do it, fine, but if  
3 you do it this way, it's going to get screwed up as soon  
4 as it hits the street. And so that's the principal focus.

5           And most of the lobbying -- well, about half of  
6 the lobbying is actually done by our sections. The rest  
7 of it -- and it's all done by our lobbyists. We have  
8 three full-time lobbyists. It's all done by our  
9 lobbyists. But the rest of it has to do mostly with the  
10 court systems; funding with the courts, access to justice  
11 issues, all the issues you've heard about today in terms  
12 of what an organization should be involved with that  
13 involves lawyers.

14           Like I said, we also have -- getting back to the  
15 disciplinary issue, we have a lot of interaction with our  
16 Court. We have a Wisconsin Lawyer Assistance Program for  
17 lawyers suffering with drugs, alcohol, stress, those sorts  
18 of things. We take care of the monitoring. So if a  
19 lawyer loses his or her license and wants to get their  
20 license back and they have to go into a monitoring  
21 program, whether they have to do urine drops for drug  
22 testing and all sorts of things, we make sure that  
23 happens. And we have actually kicked people out of the  
24 program, which means they will not get their license back.

25           We also have a similar program for judges. Our

1 judges -- before the creation of our Judicial Program For  
2 Assistance, our judges, if they were having a problem or  
3 if they knew of another judge who had a problem, they  
4 would have to call the personnel office for the Director  
5 of State Courts Office. Not a lot of calls were made.  
6 Now there are quite a few calls being made to help judges  
7 deal with the stress and whatnot. So we're very active  
8 with that.

9           If a lawyer is not under discipline, but is  
10 having a series of complaints brought against her or him,  
11 that they haven't violated the Ethics Code yet, but  
12 they're getting pretty close, and a lot of it maybe deals  
13 with law office management issues, the Director of the  
14 Office of Lawyer Regulation will refer that person to our  
15 Law Office Management Assistance attorney for advice on  
16 calendaring, advice on business related issues, advice on  
17 technology or whatever. So we're very active with the  
18 Court in supporting those sorts of things.

19           I could go on, but as always I'm happy to answer  
20 any questions.

21           MR. PASTERNAK: Thank you very much, George. I  
22 have two questions for you. During the last break I was  
23 told by somebody else that Alabama is the only other state  
24 that's a mandatory Bar where the legislature that sets  
25 fees other than California. Can you --

1           MR. BROWN: I think you're right about Alabama,  
2 and I'm wondering about Texas. Texas is actually a state  
3 agency. It's a state agency by their choice because they  
4 were being sued and they didn't have a tax status. We do  
5 not have a tax status. We're instrumentality of the state  
6 and so we do not we pay taxes. We collect and remit sales  
7 tax, but we do not pay those taxes. We don't pay property  
8 taxes and we don't pay those sorts of things.

9           Texas, when they were confronted with that issue,  
10 instead of becoming a 501(c)(6), they opted to become a  
11 state agency. The result I know is that every 12 to 14  
12 years they have to go through something called Sunset.  
13 And Sunset essentially requires them to -- it's  
14 essentially a version of a zero-based budgeting. They  
15 have to go and justify everything they do before the  
16 legislature.

17           And in talking with one of their executive  
18 directors a number of years ago now who's long gone, about  
19 20% of his staff time is spent of his 240-staff people,  
20 about 20% of them spend a whole year doing nothing but  
21 dealing with Sunset. But I don't know if their individual  
22 budget every year is approved by the Legislature.

23           MR. PASTERNAK: Also, can you tell us how  
24 Wisconsin defines the practice of law?

25           MR. BROWN: Well, it depends on where you look.

1 Under Chapter 757.30 it basically says the practice of law  
2 is what a lawyer does. Now tautologies don't end up doing  
3 anybody any good. And that was enacted in the 1930s. The  
4 enforcement mechanism is through the District Attorney,  
5 which is our county prosecutor.

6           Because of that lack of clarity, we actually went  
7 to the Supreme Court and asked for a better definition.  
8 Now, recall in 1961 the Supreme Court already gave away  
9 the practice of law with regard to real estate by  
10 recognizing that real estate agents -- although real  
11 estate practice is the practice of law in terms of filling  
12 out legal forms and those sorts of things, they  
13 essentially said that because real estate agents are well  
14 trained and they're separately licensed, that they can  
15 fill out those forms, it was still just the practice of  
16 law, but it was an allowable practice of law by a  
17 nonlawyer.

18           When we went to the Court requesting this new  
19 definition, they gave us a new definition of the practice  
20 of law, which is a little better. But what they did was  
21 they created -- in a five-page chapter they created  
22 two-and-a-half pages of exemptions. So if you are a  
23 licensed professional of any capacity under Wisconsin law  
24 and are doing things related to the law within your  
25 license, then it's considered the permissible practice of

1 law by a nonlawyer, which is rather disturbing. They've  
2 essentially -- in my parlance, they've given away the  
3 practice of law.

4 MR. PASTERNAK: That you. We still have a couple  
5 of commission members left. Any questions?

6 Well, thank you very much. I want to thank all  
7 our -- I'm sorry, we have a hand up in the back.

8 MR. BRANDEL: President Pasternak.

9 I do have a question for you, Mr. Miller. When I  
10 came in this morning the terms "mandatory Bar" and  
11 "unified Bar" I thought were synonymous. The concept of a  
12 unified Bar creates the kinds of issues that have been  
13 talked about, President Pasternak in your Task Force; that  
14 is, certain kinds of regulations, mandates, prohibitions  
15 that are imposed on an organization that is functionally  
16 engaged in a public agency work. And now this is why I  
17 find the presence made by Mr. Miller and earlier this  
18 morning on the Washington Bar so very interesting.

19 We talk about the Wisconsin Bar being a unified  
20 Bar. You call yourselves a unified Bar. If I understand  
21 it correctly, Mr. Miller, you had described the regulatory  
22 functions as being directly under the aegis of the  
23 Wisconsin Supreme Court, and the regulatory functions are  
24 not part of what the Wisconsin State Bar Association does.  
25 You've described some support services that you give.

1           But could you make that as crystal clear as you  
2 can for everybody in this room? Because it makes a huge  
3 difference in terms of the appropriateness of the  
4 structure.

5           MR. BROWN: We have -- as I said, we have the  
6 authority to suspend the attorneys for not completing or  
7 not paying their dues or their assessments or not  
8 completing forms that they are required to. So we have  
9 that regulatory authority.

10           But in terms of discipline, when somebody calls  
11 me and wants to complain about an attorney, I refer them  
12 to the Office of Lawyer Regulation. That is a separate  
13 state agency under the aegis of the Supreme Court, not  
14 subject to open records by any stretch of the imagination,  
15 and neither are we. And so all the discipline is done by  
16 the Office of Lawyer Regulation for attorneys. For judges  
17 it's a whole different situation.

18           And so the same thing for admissions. We have  
19 nothing to do with admissions or with the granting of CLE  
20 credit. So two different things.

21           MS. KRINSKY: Can I ask just one thing?

22           MR. PASTERNAK: Sure. Go ahead, Miriam.

23           MS. KRINSKY: And I appreciated that question. I  
24 do think that perhaps some clarification of these terms  
25 will be helpful. Because it is clear. And a mandatory

1 Bar is very different than the notion of a unified Bar.

2 I'm just curious. I know your Board is large,  
3 and I saw from the Web site that there is a smaller  
4 Executive Committee, where I assume really the work --

5 MR. BROWN: No.

6 MS. KRINSKY: No?

7 MR. BROWN: No.

8 MS. KRINSKY: Oh.

9 MR. BROWN: We have a 52 member Board of  
10 Governors. We do not have a House of Delegates. The  
11 Board of Governors is the final policy decision maker for  
12 the organization. We actually got out of the 1950's by  
13 getting rid of our House of Delegates. And so the  
14 Board -- that's why the reason for the larger Board.  
15 There are 36 members elected by geographic districts. We  
16 have our officers, we have the three presidents,  
17 president-elect, the president and past president. We  
18 have a secretary, we have a treasurer, and the Chair of  
19 our Board is not our president. The Chair of the Board is  
20 separate elected from the body by the Board every year.  
21 And so if you're in your -- board members who are elected  
22 are limited to two two-year terms. Say you're in your  
23 third or fourth year, the Board would elect you usually.

24 The president appoints a Nominating Committee.  
25 The Nominating Committee then brings forth one candidate

1 who has to be from the Board to serve as the Board Chair.  
2 If you're a really good president, you find people who  
3 will do what you want and so you get the Chair you want.  
4 Others are, you know, a little less crafty in that way,  
5 but in any event...

6           So the Board members then also include a  
7 representative from each of our four divisions, a  
8 nonresident lawyer -- I'm sorry, young lawyers, senior  
9 lawyers and government lawyers. We have five members that  
10 represent our Nonresident Lawyers Division, because we  
11 have so many members who are nonresident lawyers and they  
12 have no other representation within the state; whereas,  
13 the divisions have representation through their geographic  
14 areas as well.

15           And then we have four members of the Board who  
16 are what we call our Building Bridges members, and they're  
17 representatives from the African-American Lawyers,  
18 Association, the Asian America Lawyers Association, the  
19 Hispanic Lawyers Association and the Indian Law Bar  
20 Association. Now, those associations -- you have to  
21 understand something Wisconsin which is very different  
22 from California. We are a very white state. We have --  
23 less than 10% of our population is of color. And I think  
24 there are maybe 125 members of the African-American  
25 Lawyers Association. There are about 60 members of the

1 Hispanic Lawyers Association. I think there's maybe 25  
2 members of the Asian American Bar, and just a handful of  
3 Native American attorneys. Even though we have a very  
4 active tribal court system, you don't have to be an  
5 attorney to practice in tribal court.

6           Our Executive Committee is made up of 17  
7 individuals; the three presidents, and six people, and one  
8 representative from each of the divisions and then six  
9 people elected from the Board by the Board. And they  
10 serve as the Executive Committee. They really have the  
11 responsibility of putting together a draft agenda. They  
12 do some of the administrative things that are required, if  
13 we need, you know, official sign-offs for banking issues  
14 and those sort of things. They also are the people I  
15 report to directly. I am hired and fired by the Board. I  
16 am the Board's only employee. I hire and fire everybody  
17 else. Quite honestly, any other process is untenable in  
18 my point of view. And if they don't like what I'm doing,  
19 then fire me.

20           And so I report to the president and the  
21 Executive Committee, and they ultimately do my evaluation  
22 and those sorts of things.

23           We are not subject to the Open Records Law, but  
24 we often mirror it. We'll have reporters at our Board  
25 meetings. We'll go closed for legislative strategy.

1 We'll go closed for litigation strategy. We'll go closed  
2 for personnel. And typically personnel is my annual  
3 evaluation. Other than that, we don't notice it, but we  
4 do send stuff out to reporters just to kind of -- just to  
5 kind of attend regularly, we'll send those notices out.

6 And in fact, we were -- the Milwaukee Journal  
7 Sentinel reporter showed up one time, and he said we were  
8 more open than any state agency he had ever covered and he  
9 was a state capitol reporter. But because we're not  
10 subject to it doesn't mean we're not open.

11 MS. KRINSKY: David?

12 MR. PASTERNAK: Yes, go ahead.

13 MS. KRINSKY: I was just going to follow up and  
14 throw something out in terms of if it weren't that  
15 difficult to pull it together for all of, you know, the  
16 great resources that went into gathering this information,  
17 because I do think that the comparisons were fascinating  
18 and that today was very helpful in terms of being able to  
19 see what that landscape looks like.

20 I think it would be interesting to know what the  
21 landscape looks like in terms of which of these Bar  
22 Associations are subject to some kind of Open Records --  
23 some kind of Open Records Act provision. I actually asked  
24 our first speaker that and she said "I would have  
25 loved" -- The Executive Director said she would have loved

1 to answer it, it's a long answer but, you know, it's an  
2 interesting one. From Washington.

3 I think it would be interesting to know which of  
4 the, at least the large Bars or Bars with Boards similar  
5 in size to ours, have term limits for their members. Our  
6 first speaker said that Washington State board members are  
7 limited to a single term. I know that in our Board, you  
8 know, there are no limits. So I think that might be  
9 interesting to know.

10 I think the issue of how do they select their  
11 officers, I think we're hearing a little bit of a pattern  
12 of president-elect, sort of a leadership ladder, and that  
13 might be interesting. And this is assuming this isn't,  
14 you know, requiring hours of work because I know that you  
15 all are stretched so thin, but if there even at least for  
16 the large Bars.

17 And then the other thing that I thought might be  
18 interesting, again this is maybe in the OGC's area, if  
19 there were a way to do it, just some kind of sense what  
20 are some of the key cases out there that have looked at  
21 this issue of separation of powers for Bar Associations  
22 that have that regulatory function, unified Bar  
23 Associations, or Bar Associations that are strictly  
24 regulatory, what have been some of the key state Supreme  
25 Court decisions that have addressed things like, you know,

1 what is within the appropriate ambit of the legislature to  
2 control the state auditory decision that we referenced  
3 this morning. You know, obviously, we have in our own  
4 Supreme Court the issue of who should set fees, and is it  
5 appropriate for the Supreme Court to set fees, or their  
6 decision that it's not appropriate for the legislature to  
7 be setting licensing fees. I just think if there were any  
8 kind of, and I know, easy and looking at all the states as  
9 to inconsistent things, but if there were some key  
10 decisions out there that might enlighten how we think  
11 about the separations of powers issue. Appointment of  
12 chief trial counsel or the equivalent in other states, if  
13 there are cases out there that look at the propriety of  
14 that decision being subject to review approval by a  
15 legislative body. I just think that some of those issues  
16 would help our thinking.

17 MS. PARKER: That's very helpful. May I  
18 interject here?

19 MR. PASTERNAK: Sure.

20 MS. PARKER: Wisconsin is an interesting case for  
21 another point, and that is unauthorized practice of law.  
22 Could you comment about that, George?

23 MR. BROWN: We had a fairly active UPL system in  
24 place prior to about 1982. And in 1982 there was a case  
25 called the Anderson case, and our UPL Committee at that

1 time brought action against a fellow named Peter Anderson  
2 because he was lobbying, and they said lobbying was a  
3 legal function and only lawyers could be able to lobby the  
4 Legislature. The Supreme Court said no, and you're wrong,  
5 and refused to take the case forward. And so our UPL  
6 Committee at that time simply disbanded.

7           In the early 1990s I worked with a president and  
8 we recreated as the Consumer Protection Committee in part  
9 in response to a number of activities that were going on  
10 at that time where similar to what the Insurance  
11 Commissioner was saying where individuals were selling  
12 living trusts, and they were going around saying, "Lawyers  
13 are going to charge you a fortune. You need to have a  
14 living trust. It's only going to cost you \$7,000. Fill  
15 out this form and we're good." And they would create a  
16 trust, but they would never fill out. And, of course, a  
17 lawyer could probably have done a trust for about a  
18 thousand dollars because these were often just very simple  
19 sorts of things. They often preyed on the elderly.

20           Those cases were prosecuted principally as fraud  
21 cases, but with UPL as a secondary charge. And in one  
22 instance an individual was required by the judge to pay us  
23 \$12,000, which we then set aside for prosecution of UPL  
24 cases.

25           UPL is prosecuted by the county attorney, the

1 district attorney. And so first of all, many of them,  
2 since they stand for election, don't want to prosecute  
3 these cases because it looks like they're protecting their  
4 own, number one.

5           The second one is where's the harm? And I'll  
6 give you another example that comes out of the mid 1990s.  
7 An individual in a southeastern Wisconsin county, which is  
8 kind of semi-suburban area, had been practicing law, a  
9 California law school graduate, never passed the Bar here.  
10 Opened a practice in southeastern Wisconsin. And under  
11 our court rules, you have to put your Bar number down on  
12 any pleadings. Well, he had a plaintiff's case and the  
13 defense attorney noticed there was no Bar number. So he  
14 called us. And we said, "We have no idea who this guy  
15 is." He had been practicing there for six or eight years.  
16 And so the individual then went to the district attorney.  
17 The district attorney did a thorough investigation.  
18 Interviewed every one of these guy's clients, and  
19 everybody, including the ones in jail said, "He did a  
20 really good job." And so never brought a case.

21           When I mentioned to you previously about the  
22 petition we brought before the Court regarding changing  
23 the definition -- or creating a better definition of the  
24 practice of law, and it dealt with not only licensing  
25 paralegals, but also dealing with the whole issue of

1 paralegals, an individual stood up before the Wisconsin  
2 Supreme Court and he said, "I'm from southwestern  
3 Wisconsin. I'm a paralegal. My clients pay me. They  
4 like my work. I don't work for an attorney and I'm doing  
5 a really good job." And the response from the Supreme  
6 Court, and this is obviously a UPL case to the Supreme  
7 Court, the response from the Supreme Court was, "Thank you  
8 very much for your testimony." That was it.

9           They then went on to create SCR Chapter --  
10 Supreme Court Rule 23, which defines the practice of law  
11 and then creates two-and-a-half pages of exemptions that  
12 I've told you about. So it's a nonissue. I believe  
13 personally -- and I've written columns. I write an  
14 Executive Director column every month in our magazine. I  
15 personally believe that UPL is the imaginal line for  
16 attorneys. That it's this false sense of security that  
17 they're going to stop all this stuff that's happening  
18 right now when, in fact, what we need to be doing as Bar  
19 Associations, is we need to be educating our lawyers how  
20 to take advantage of things like Legal Zoom, or Avvo or  
21 whomever.

22           If you look at -- if you were -- I think this was  
23 before your time, Elizabeth --

24           MS. PARKER: Most things are.

25           MR. BROWN: As Executive Director here.

1 MS. PARKER: Right.

2 MR. BROWN: Two years ago, I believe it was, the  
3 National Conference of Bar Presidents had a Saturday  
4 plenary session, and one of the -- they had the -- the  
5 President of Legal Zoom was there, the Chief Legal Counsel  
6 for Avvo was there and a couple of other individuals. And  
7 the President of Legal Zoom, who is not a lawyer, said,  
8 "Look. Lawyers have abandoned the middle class, period.  
9 End of story." 350 Bar presidents and executives  
10 directors in the room and nobody objected. Nobody said,  
11 "He's wrong." He then went on to say somewhat obliquely,  
12 "We're in the process of building the largest law firm in  
13 the world. We're going to have 36,000 lawyers, and  
14 they're going to be using our forms, and they're going to  
15 be some version of the Avvo model, you know, 15 minutes  
16 for \$15 or \$30," or whatever Avvo is charging. Which I  
17 think quite honestly if I was a young lawyer and I was  
18 getting \$30 every \$15 and if I was working eight hours a  
19 day, that's pretty good money for sitting in my pajamas.

20 MR. PASTERNAK: I've got a question for you,  
21 George.

22 You told us about the discipline of lawyers and,  
23 as I recall, you said it's under the Supreme Court.

24 MR. BROWN: Right.

25 MR. PASTERNAK: Does your legislature have any

1 involvement in your mandatory Bar? And I take it it has  
2 no involvement in the discipline of attorneys?

3 MR. BROWN: Right. In fact, no, it has no  
4 involvement at all. In fact, the Court has very little  
5 involvement. We do not go to the Court for any dues  
6 increases. That's strictly a decision of the Board of  
7 Governors. In fact, when we collect the assessments for  
8 the Office of Lawyer Regulation and the Board of Bar  
9 Examiners, we do not write them a single checks, we write  
10 them 12 checks, one a month, in order to keep the  
11 Legislature's mitts off the money. The only thing they  
12 can do is there's a revenue line in their budget, which  
13 has to be approved by the legislature. But that's just  
14 the revenue line. But the money itself comes in on a  
15 monthly basis and then they dole it on out on a monthly  
16 base sit.

17 The Client Protection Fund is under us for  
18 exactly the same reason, so the Legislature can't grab the  
19 money. And one of the ways we keep the price -- I don't  
20 know if you do this, but we go for subrogation as often as  
21 we can on Client Protection Fund fees. So that we're  
22 recovering money either from the attorneys, if they can  
23 pay it back, or sometimes they're under an order to pay it  
24 back by the Court if they want to get their license back,  
25 so we're able to keep the price down relative speaking,

1 even though we have a \$75,000 limit like in Washington.

2 MR. PASTERNAK: We do the same in subrogation,  
3 but unfortunately it's rare what we're able to recover.

4 MR. BROWN: Right. Right. Particularly the  
5 million dollar cases.

6 MR. PASTERNAK: Right. Particularly the ones  
7 where you have lots of maintenance.

8 MR. BROWN: Can I tell you a story?

9 MR. PASTERNAK: Yes.

10 MR. BROWN: This is --

11 MR. PASTERNAK: So far they've been very  
12 entertaining.

13 MR. BROWN: The International Institute of Law  
14 Association, which is an international association that  
15 we're trying to get Elizabeth involved in, that Paula and  
16 I are involved in, we were having a meeting in D.C. a  
17 couple of months ago last fall and we were telling kind of  
18 horror stories. One was the Executive Director of the  
19 Hong Kong Bar was telling a Client Protection Fund story  
20 where the attorney from the Gates Law Firm from their Hong  
21 Kong office stole a billion dollars. It's kind of hard to  
22 get that money back. He with gambling away \$10 million a  
23 day, so...

24 MR. PASTERNAK: That is story.

25 Thank you very much. I want to thank all of our

1 speakers. I really want to thank Elizabeth and our staff  
2 for putting this together today. I think it's been a very  
3 valuable opening testament in terms of our information  
4 gathering for this process.

5 We're meeting again on April 4th here in San  
6 Francisco for a hearing, which is unrestricted in terms of  
7 what we're going to hear. I anticipate it's going to be a  
8 full day. And then on the 25th in Los Angeles, the same  
9 purpose. I anticipate that will be a full day as well.

10 So thank you all, and thank you to the Commission  
11 members who have stayed with us. We're adjourned.

12 (3:05 p.m.)

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1 STATE OF CALIFORNIA )  
2 ) ss.  
3 CITY AND COUNTY OF SAN FRANCISCO )  
4

5 I hereby certify that the foregoing transcript is  
6 a full, true, and correct transcription of the proceedings  
7 of the date and time therein stated.

8 I further certify that I am not of counsel or  
9 attorney for either or any of the parties to said  
10 proceedings, nor in any way interested in the outcome of  
11 the cause named in said caption.

12 IN WITNESS WHEREOF, I have hereunto set my hand  
13 this 9th day of March 2016.

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JOAN B. MERTEN, CSR No. 6922  
Certified Shorthand Reporter